19-8142

No. 19-A833

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT SARHAN and ANABELLA SOURY
a/k/a ANABELLA SARHAN
PETITIONER

v.

H & H INVESTORS, INC.
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE THIRD DISTRICT COURT OF APPEALS

PETITITION FOR WRIT OF CERTIORARI

Robert Sarhan
Anabella Soury
a/k/a Anabella Sarhan
19 West Flagler Street Rm 404
Miami, Florida 33130
Tel.No.305-374-3373
drrob2007@yahoo.com

QUESTIONS PRESENTED

Whether Anabella Soury, as 50% interest Mortgage Holder in this Mortgage Foreclosure Case, where the judgment is based on a Residential Home Loan, where Anabella Soury, as an Indispensable Party and her attorney, Robert L. Moore were **Never Served with a Final Judgment of Foreclosure or the Amended Final Judgement of Foreclosure** by the lower court or by opposing counsel and the time to appeal has long passed, where Anabella Soury was denied the opportunity to be heard. Was this a denial of due process and does this render the judgment of foreclosure void?

When the lower court, Judge Michael Hanzman denied Attorney Arthur Morburger to speak in open court and argue the Petitioners brief that he wrote "Defendants Emergency Motion for Relief from Judgment as Void." Was this a denial of due process and should the judgment of foreclosure be void?

When the lower court, Judge Hanzman went on to say, if you file any documents in the future to stop the sale of Robert & Anabella's home, you will be sanctioned. Is this denial of due process?

Should the Third District Court of Appeals ruling of a per curiam order be Quashed for failure to reverse the trial court order from denying relief from the void judgment?

CORPORATE DISCLOSURE STATEMENT

Respondents, H & H Investors, Inc. is a Florida Corporation, which is not publicly held corporation. Ralph Halim is the owner of the Corporation.

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TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

This Petition asks the Court to Quash the Third District Court of Appeals ruling of a per curiam order, for failure to reverse the trial court order and from denying relief from the void foreclosure judgment?

This Petitioners seeks review of a Judgment of Foreclosure of a Residential Home Loan on Robert & Anabella's home of 26 years, which is "Void on its Face." Where Anabella and her attorney, Robert L. Moore, were **Never served with the Final Judgment of Foreclosure or the Amended Final Judgment of Foreclosure** from the lower court or from opposing counsel and the time for appeal has long passed, therefore, Anabella was denied the opportunity to be heard and a denial of due process, under Fla. Statute 1.540(b)(4) renders the judgment of foreclosure void. *Tannenbaum v. Shea*, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014). Please See **Exhibit A & B,** the Final and Amended Final Judgment of Foreclosure. Anabella's

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

Attorney Robert L. Maoore not served
Anabella Soury not served

ORIGINAL
JUDGE JOSE M. RODRIGUEZ

Inserted for the Convinence
Of the United States Supreme Court

PARTIAL
EXHIBIT A

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

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

Attorney Robert L. Moore not served.
Anabella Soury not served.

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

Inserted for the Convinence
of the United States Supreme Court

PARTIAL
EXhibit B

Warranty Deed, in which she is 50% interest Mortgage Holder in this Mortgage Foreclosure Case. **Exhibit C**.

The lower court denied attorney Arthur Morburger who represented Robert Sarhan, the right to speak and to argue his Motion that he wrote "Defendants Emergency Motion for Relief from Judgment as Void" which was pending before the lower court, which is a denial of due process and renders the judgment of foreclosure void. Please see Motion **Exhibit D** and Court Transcripts **Exhibit E pages 4-7 and 22.**

A trial court's ruling on a rule 1.540(b) motion for relief from judgment is usually reviewed on appeal for an abuse of discretion. See *Epstein v. Bank of Am.*, 162 So. 3d 159, 161 (Fla. 4th DCA 2015) However, "[a] decision whether or not to vacate a void judgment is not within the ambit of a trial court's discretion; if a judgment previously entered is void, the trial court must vacate the judgment." *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 81 (Fla. 2d DCA 2014); see also *Horton v. Rodriguez Espaillat y Asociados*, 926 So. 2d 436, 437 (Fla. 3d DCA 2006) (holding that the trial court must vacate a void judgment). As a trial court's ruling on whether a judgment is void presents a question of law, an appellate court reviews the trial court's ruling de novo. See *Vercosa v. Fields,* 174 So. 3d 550, 552 (Fla. 4th DCA 2015) ("Whether a judgment is void is a question of law reviewed de novo."). "A void judgment is so defective that it is deemed never to have had legal force and

effect." *Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n*, 968 So. 2d 658, 665 (Fla. 2d DCA 2007).

A trial court's ruling on a motion to vacate generally is reviewed for abuse of discretion. Suntrust Mortg. v. Torrenga, 153 So. 3d 952, 953 (Fla. 4th DCA 2014). But "when the underlying judgment is 'void,' the trial court has no discretion, but is obligated to vacate the judgment." Phenion Dev. Grp., Inc. v. Love, 940 So. 2d 1179, 1181 (Fla. 5th DCA 2006) (citing State, Dep't of Transp. v. Bailey, 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992)). The fee simple title holder is an indispensable party in an action to foreclose a mortgage on property. Oakland Props. Corp. v. Hogan, 117 So. 846, 848 (Fla. 1928) ("One who holds the legal title to mortgaged property is not only necessary, but is an indispensable, party defendant in a suit to foreclose a mortgage."); Cmty. Fed. Sav. & Loan Ass'n of Palm Beaches v. Wright, 452 So. 2d 638, 640 (Fla. 4th DCA 1984). **"Indispensable parties are necessary parties so essential to a suit that no final decision can be rendered without their joinder." Hertz Corp. v. Piccolo, 453 So. 2d 12, 14 n.3 (Florida Supreme Court 1984). We note that, more than a century ago, the Florida Supreme Court recognized that "a foreclosure proceeding resulting in a final decree and a sale of the mortgaged property, without the holder of the legal title being before the court will have no effect to transfer his title to the purchaser at said sale." Jordan v. Sayre, 24 Fla. 1, 3 So. 329, 330 (1888). If the foreclosure proceeding has no effect to**

transfer title because the legal title holder has not been joined, it is simply another way of saying that the foreclosure proceeding is void.

In this Case, the judgment is void: since Anabella and her attorney, Robert L. Moore were **Never** served with the Final Judgment or the Amended Final Judgment of Foreclosure and the time to appeal has long passed, therefore Anabella was denied an opportunity to be heard and is a violation of due process. *Tannenbaum v. Shea,* 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014).

TO ASSIST THIS SUPREME COURT WE HAVE INCLUDED THE CERTIFICATES ON THE NEXT TWO PAGES FOR THE COURTS CONVINENCE AND WILL SHOW THAT NEITHER ROBERT L. MOORE OR ANABELLA SOURY WERE SERVED THE FINAL OR AMENDED FINAL JUDGMENTS OF FORECLOSURE WHICH RENDERS THE JUDGMENT OF FORECLOSURE VOID

OPINIONS BELOW

Third District Court of Appeals Case No. 3D19-1322 ruling per curiam.

JURISDICTION

The Third District Court of Appeals entered a judgment of per curiam in this Case No. 3D19-1322 on September 18, 2019. This Court has jurisdiction under 28 USC §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

U.S. Const. amend. XIV The 14th amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments

that comply with the rules and case law. Most due process exceptions deal with the issue of notification. If, for example, someone gets a judgement against you in another state without your having been notified, you can attack the judgement for lack of due process of law. In Griffen v. Griffen, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635a pro se litigant won his case in the Supreme Court who stated:

The Fourteenth Amendment states: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV.

STATEMENT OF THE CASE AND THE FACTS

The Judgment of foreclosure is demonstrated by this United States Supreme Court Brief to be "Void."

Robert Sarhan (hereinafter "Robert") won an appeal in the Third District, *Sarhan v. H & H Investors, Inc.*, 88 So. 3rd 219 (Fla 3rd DCA 2011), disallowing an action for foreclosure of a mortgage. Please See **Exhibit F**. The instant suit was thereafter commenced three years later in 2012. In the underlying action, the complaint, filed by (Plaintiff) H & H Investors, sought to foreclose a mortgage, signed by (Defendants) Robert Sarhan and Anabella Sarhan, husband and wife, securing a note signed only by Robert Sarhan. On October 31, 2012, Defendant

Anabella Sarhan was held to have answered the complaint pro se and was not defaulted. Plaintiff moved for summary judgment against Defendant Anabella, Defendant answered through counsel, Robert L. Moore and an order was then entered in 2013; in regard to the summary judgment motion, that was "granted as to summary judgment against Anabella Sarhan." H & H Investors then filed a Motion in Limini and lower court denied Robert and Anabella a foreclosure trial. The case then proceeded to a final judgment of foreclosure, **Exhibit A**, then into an amended final judgment of foreclosure, **Exhibit B**. At the end of each of those judgments, appeared certificates, **Exhibit A** and **B**, each certifying upon whom they were served, that the Judgment was served only on Gastesi, counsel for Plaintiff, and on Michael Cotzen, attorney for Robert Sarhan, and the Amended Judgment was served only on Gastesi and on Arthur Morburger, successor counsel for Robert Sarhan. Not listed on those certificates was either Anabella or her attorney Robert L. Moore. Please see **Exhibit A** and **B**. Included in the Appendix is the Florida E- Portal, listing the email addresses to which Florida E Portal filings are emailed, **Exhibit G**. That exhibit shows that neither Anabella nor her Attorney Robert L. Moore were listed as potential email filing addressees.

For the Court's convenience, we are providing a transcription of the aforementioned Certificates of the Final Judgment and Amended Final Judgment as follows in this Supreme Court brief also as **Exhibits A & B**.

Robert Sarhan appealed from the judgment. Anabella did not join in the appeal. The Third District issued a mandate, affirming the judgment. Listed in the style of the appeal was only one Appellant, Robert Sarhan. Robert Sarhan and Anabella Soury then filed Fla. R. Civ. P 1.540(b)(3)(4) motions for relief from judgment on fraud grounds and then as "Void." **Exhibit D**

Attached to the motion, grounded on the voidness of the judgment, was the Declaration of Anabella, verifying that she was never served with the notice for trial, or the judgment, or the amended judgment. **Exhibit H** Also **Exhibits A & B** and **Exhibit G** which is the Florida E Portal System , all support Anabella's Declaration and her attorney Robert L. Moore, that both were never served with the Final or Amended Final judgment of Foreclosure.

Anabella's motion for relief from the judgment as "Void," **Exhibit D** did competently and explicitly claim that she was denied notice and in fact was accompanied by her Declaration that verified a lack of notice of trial, of the judgment, and of the amended judgment. **Exhibit H**. That claim was not "belied" but rather was verified by the aforementioned certificates of service at the end of the judgment and amended judgment verifying service only on Gastesi, Cotzen, and Morburger. **Exhibit A** and **B** Moreover, that motion did not challenge the order granting summary judgment as an error. Rather, Anabella pointed out that an order, merely "granting" summary judgment, is interlocutory, **Exhibit D**, and may be

appealed only after a judgment is entered – of which Anabella did not receive notice. The motion's argument headings summarized those arguments, as follows:

> "The complaint joined Anabella as a mortgagor to foreclose any rights she may have. The order merely granting summary judgment against Anabella was not final and left her as a party in this case. Aside from that silent non-final order, no other prejudgment order was directed against Anabella so that she remained a party. Even though she remained a party, no orders or judgments were ever served on her or her attorney. Anabella, as a mortgagor in a mortgage foreclosure suit, as a potential interest holder and interest holder was and is an indispensable party required to be served. Failure to serve an indispensable party, Anabella, renders the judgment void."

At the July 10, 2019 hearing of that motion, Judge Hanzman excluded Defense counsel Morburger from making any oral argument or rebuttal in behalf of Robert Sarhan. **Exhibit E, pages 4-7 and 22**. The Judge explained that it was his position that Robert Sarhan had no stake in the arguments advanced in the motion. He did allow Attorney Robert Moore to argue. **Robert Moore advised Judge Hanzman, that neither he nor Anabella was served with notices. Exhibit E, pages 12, 20, and 40.** At the hearing before Judge Hanzman, Plaintiff's counsel produced no proof of any service on Anabella or her attorney.

Meanwhile, on June 25, 2019 under the terms of the Amended Judgment, the premises were sold to H & H Investors, Inc. at a clerk's sale. A Certificate of Sale was then issued, to which an Objection was interposed by Defendants, and has remained pending.

Plaintiffs moved for a stay of the case pending appeal in Case No. 3D19-1322. **The lower court Judge Gordon denied the motion agreeing it was black letter law that the judgment entered without proper notice is not valid, but stating he was uncomfortable in granting the stay based on the case's "procedural history." Exhibit I Page 17, lines 7-25.**

SUMMARY OF ARGUMENT

The order that simply "granted" summary judgment against Anabella was a purely interlocutory order that left Anabella a prejudgment party in the case, entitled to due process notices. Moreover, no other prejudgment order was directed against Anabella in any way modifying her prejudgment status. Anabella, as a co-owner of the mortgaged property to be foreclosed, was an indispensable party and entitled to receive due process notices. The lack of service notices on Anabella and her attorney Robert L. Moore, either prejudgment or at the time of entry of the judgment and amended judgment, rendered the judgment and the amended judgment void. Even the lower court Judge Gordon agreed that it was "black letter law" that the judgment was void. That judgment and amended judgment were rendered void for a second reason -- because the Court foreclosed Robert Sarhan's attorney, Arthur Morburger from orally arguing and rebutting Plaintiff's attorney, a violation of due process. **Exhibit E, pages 4-7 and 22.**

STANDARDS OF REVIEW

Republic of Ecuador v. Roberto Isaias Dassum and William Isaias Dassum 255 So. 3d 390 (Fla. 3rd DCA 2017) held:

"Pure question of law are reviewed '*de novo*.'"

It will be seen that arguments raised in this brief all involve pure questions of law and require a *de novo* standard of review.

REASON FOR GRANTING THE PETITION

I. The Order Merely Granting Summary Judgment Against Anabella Was NOT Final And Left Her As A Party In This Case

The Complaint Joined Anabella As A Mortgagor To Foreclose Any Rights She May Have. The amended complaint alleged that Anabella was a co-signer on the mortgage and the mortgage listed her as Robert Sarhan's "wife." She was listed in the mortgage as signing as mortgagor and in the action as a Defendant because of her potential interest and because of the homestead interest in the mortgaged premises. Subsequent to the service of process that joined her as a Defendant and the motion for the service of the summary judgment, no further service was accomplished against her, but she did secure a one-half interest in the premises. **Exhibit C.**

On April 10, 2013, an order was entered, stating only "granted as to summary judgment against Anabella Sarhan," but that order elucidated nothing

further. In regard to another comparably "silent" order, merely "granting" a motion, *Rados v. Rados*, 791 So.2d 1130, 1134-35 (Fla. 2nd DCA 2001) ascribed to that "grant" very minimal significance and held:

> "Inclosing, we note the Fourth District in *White v. White*, 695 So.2d381 (Fla. 4th DCA 1997), announced that an order simply granting a motion for appellate attorney's fees in a domestic relations, without more, is only a determination that the trial court should further address the matter. Thus, the appellate court is presumed to have not decided entitlement when the order is otherwise silent." (Italics added)

Furthermore, in regard to an order merely "granting" summary judgment, *Palm Hill Villas Homeowners Ass'n, Inc. v. Rose-Green*, 855 So.2d 83, 84 (Fla. 4th DCA 2003), held:

> "The trial court granted the motion for summary judgment on the association's claim against the homeowner; however, it is not a final order in that it merely grants the motion and does not contain words of finality. *Dobrick v. Discovery Cruises*, Inc., 581 So.2d 645 (Fla. 4th DCA 1991)."

Likewise, *City of Tampa v. McAfee,* 896 So.2d 943, 945 (Fla. 2nd DCA 2005) held:

> "This court has no jurisdiction to review a nonfinal order granting a motion for summary judgment.1 See *Palm Hill Villas Homeowners Ass'n v. Rose–Green*, 855 So.2d 83 (Fla. 4th DCA 2003); *Lidsky Vaccaro & Montes, P.A. v. Morejon*, 813 So.2d 146, 148 (Fla. 3d DCA 2002)."

In regard to an order merely "granting" summary judgment, *Brown v. Mitchell*, 151 So.2d 305, 308 (Fla. 1st DCA 1963) held:

> "A final decree decides and disposes of the cause on its merits, leaving no question open for judicial determination except the execution or enforcement of the decree if necessary. The distinguishing feature

> between an interlocutory decree and a final decree is that an interlocutory decree is rendered in the middle of a cause and does not finally determine or complete the cause, while a final decree determines the rights of the parties and disposes of the cause on its merits, leaving nothing more to be done in the cause as distinguished from beyond the cause. The test of a final decree is whether the judicial labor is at an end.3 Applying that well-established test, the summary decree [merely granting summary judgment] was not a final decree."

Not only was the above-quoted order silent as to what was granted but also, according to *Palm-Hill, City of Tampa*, and *Brown,* the order was not final and was not appealable. She could appeal that ruling only as part of an appeal from an ensuing judgment but she could not do so in light of the fact that the ensuing judgment, the "Amended Judgment," **Exhibits A & B** was never served on her. Therefore Anabella Sarhan remained as a party -- a Defendant -- in the case at bar even after the entry of that silent, nonfinal order.

II. Aside From That Silent Non-Final Order, No Other Prejudgment Order Was Directed Against Anabella So That She Remained A Party

Indeed, nowhere in the case at bar is there any other prejudgment order, entered either in favor of, or in opposition to, Anabella Sarhan. In other words, Anabella Sarhan has continued on as a party in the case at bar right up through the entry of judgment. **Exhibit A** That is even evidenced by the Amended Judgment, **Exhibit B**, which has been entered in this case which listed Anabella Sarhan not only in the style of the case as one of the several "Defendants" [plural] but also in its operative text. The Amended Judgment, in ¶¶ 3, 7, and 9, improperly and

confusingly purports to effect the "right, title, interest, and claims" of "Defendants" [plural] or "Defendant's [singular] right of redemption." Additionally, the Amended Judgment, in ¶ 8, reserved jurisdiction to enter "further orders that are proper." **Exhibit B.**

III. Even Though She Remained A Party, No Orders Or Judgments Were Ever Served On Her or Her Attorney Robert L. Moore

Moreover, there was no service of the notice for trial, of the notice of hearing of that motion, or of the judgment or amended judgment. In fact, at the conclusion of the judgment and the amended judgment there is certified to whom it was served, **Exhibit A** and **B**, but neither Anabella Sarhan nor her attorney, Robert L. Moore are certified as having been served –and neither was served, **Exhibit G & H**.

Judge Hanzman mistakenly cited and relied on *Curbelo v. Ullman*, 571 So.2d 443 (Fla. 1990). In that case, the Court reasoned that the defendant waived his claim of lack of notice because he could have, but did not, file a notice of appeal from the judgment. *Curbelo*'s reasoning is readily distinguishable because Anabella had no notice of the judgment or of the amended judgment, **Exhibit A** and **B**, and therefore could not (and did not) file a timely notice of appeal.

His order was moreover rendered a denial of due process and "void" by virtue of his exclusion of Robert Sarhan's oral argument and rebuttal as is explained in Argument VII, post.

IV. Anabella, As A Mortgagor In A Mortgage Foreclosure Suit, As A Potential Interest Holder and Interest Holder, Was And Is An Indispensable Party Required To Be Served

The complaint named Anabella as a potential interest holder in the property and Anabella produced to the Court an eight-year-old deed conferring on her a one-half interest. **Exhibit C**. As previously noted, that issue was not disposed of by the aforementioned interlocutory order merely "granting" summary judgment against her. It is patently "Black Letter Law" that, as a potential interest holder in the to-be-foreclosed property, she was an indispensable party to the action – the action could not move forward without joining her in all the court proceedings. Since she was not served with the Judgment, **Exhibit A**, or the Amended Judgment, **Exhibit B**, or other papers in the action, there was a fatal defect in each of those proceedings and in the ordered sale of the property in foreclosure requiring an appellate reversal. *Marquette v. Hathaway*, 76 So.2d 648, 652 (Fla. 1954) held:

> "... it would seem that the suit was defective for lack of necessary and indispensable parties' defendant without which no proper decree binding their interest could have been lawfully entered. *Steere v. Tention*, 46Fla. 510, 35 So. 106; *Jones v. Federal Farm Mtg. Corp.*, 132 Fla. 807, 182 So. 226. Though this Court is loath to take cognizance of errors not properly brought here by assignments of error, we think that this is such a fundamental defect in the pleadings and proceedings that it is our duty to take note of it. See *Anders v. Nicholson*, 111 Fla. 849, 150 So. 639; *Smith v. Pattishall*, 127 Fla. 474, 129 Fla. 498, 176 So. 568." (Italics added)

Reilly v. U.S. Bank Nat. Ass'n, 185 So.3d 620, 621 (Fla. 4th DCA 2016) held:

"Florida Rule of Civil Procedure 1.440 provides that a case may be set for trial when it is "at issue." First, however, "[a]n answer must be served by or a default entered against all defending parties before the action is at issue." *Ocean Bank v. Garcia-Villalta*, 141 So.3d 256, 258 (Fla. 3d DCA 2014) (quoting *Bennett v. Cont'l Chems., Inc.*, 492 So.2d 724, 727 n. 1 (Fla. 1st DCA 1986)). Thus, where a defendant has not yet answered the complaint, and the plaintiff has failed to obtain a default, the action is not yet at issue. *U.S. Bank Nat'l Ass'n v. Croteau*,183 So.3d 1089 (Fla. 4th DCA 2015)." (Italics added)

Daniels v. Henderson, 5 Fla. 452, 454–56, 1854 WL 1276, at *2–3 (1854) held:

"That there is manifest error in this record, no one, we think, will deny; but we have been in some difficulty in arriving at a conclusion how this error should be corrected. Were this a suit in chancery, the difficulty would not exist. There are many cases of foreclosure to which the statute mentioned is entirely inapplicable and inadequate. For instance, in the case of *Wilson, Administrator vs. Hayward*, 1 Florida Reports, 27, this court held "that this act may afford a remedy against the mortgagor, but not against the assignee of the mortgagor," because the statute gives judgment for the debt, which cannot be rendered against the assignee of the mortgagor, and that the party claiming the foreclosure, under the statute, should be the owner of all the demands secured by the mortgage; and in the case of *Manley and Moseley, Administrators, &c., against the Union Bank,* it held that where the mortgagee has elected to proceed at law, and has obtained judgment there upon his debt, he cannot proceed under the statute, but should go into chancery to obtain a foreclosure of his mortgage; and owing to the anomalous character of the case now presented for our consideration, much doubt was at first entertained whether this court could do otherwise than to remand this case to the court below, with directions to dismiss the petition. The wife is a party to the mortgage, which makes her a necessary party to the suit, so far as the mortgage and foreclosure are concerned, but she is not a party to the note, and therefore is by no means a necessary party so far as it is concerned, and no judgment upon that should have been entered against her. Were this a case in chancery, the rights of all the parties could be adjusted without difficulty, and were it a case at common law, this joinder would have been fatal to it. We often hear this statute spoke of as providing for the foreclosure of mortgages at common law, but it only provides for the foreclosure of

mortgages in the common law courts, and does not require us to apply to it the strict technical rules of the common law, and in the case of *Manley and Moseley, Administrators, vs. the Union Bank*, above cited, this court so adjudged, and treated it accordingly. At page 185, in discussing a question of pleading under it, the court used the following language, viz: "We do not consider the ordinary rules of special pleading or the technical rules of practice in ordinary cases at law, applicable to a proceeding under our statute of foreclosure. The proceeding is an anomalous one, for which neither the courts of common law nor equity furnish a precedent. And so the appellee has treated it, for his petition neither contains the essential requisites of a declaration at law nor of a bill in chancery. It contains something of both, but not enough of either to stand the test of scrutiny, by the rules of pleading which prevail in either of those tribunals; and were we to apply that strictness to it which is demanded in relation to the pleas or objections, the appellee must fail on that ground alone, if on no other. But we are not inclined to apply a greater degree of strictness to either than is necessary to subserve the principles of justice and equity. Indeed, a more liberal spirit than prevailed in times gone by in regard to special pleading, one more consonant with the spirit of the age, seems everywhere to be gaining ground, and we feel warranted in departing from those strict, technical and rigid rules which were formerly applied to this science, whenever such departure may facilitate the attainment of justice, without endangering any of its principles, and our Legislature has left us an open door for so doing." Were this case to be sent out of court, it would be in compliance with some of those strict and technical rules; but we think we can avoid that, without endangering any of the principles of justice, and we are therefore disposed to carry out in this case the principles enunciated in the one last cited. ***We have said that the wife is a necessary party so far as the mortgage and foreclosure are concerned."*** *(Italics added)*

V. Failure To Give Notice to Indispensable Party Anabella Renders Judgment VOID

FL Homes1 LLC v. Kokolis Trustee of Toula Kokolis Revocable Trust, 2019 WL 2121873, at *3 (Fla. 4th DCA 2019) held:

> ***"That the initial foreclosure judgment was void for failure to join an indispensable party*** distinguishes this case from *Epstein v. Bank* of America, 162 So. 3d 159 (Fla. 4th DCA 2015). There, we rejected a bank's due process challenge to a final judgment where the bank was not asserting its own constitutional rights, but those of another. Id. at 162. We observed that "constitutional rights are personal and may not be asserted vicariously." Id. (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 610, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973)). This case involves statutory rights under the lis pendens statute, not constitutional rights. Because the impact of the lis pendens upon appellants' property rights depended upon the validity of the initial final judgment, appellants had standing to attack the final judgment as void." (Italics added)

Mosley v. American Home Assurance Co., 2013WL 12095165, at*1(S.D.Fla., 2013) held:

> "'The general rule is that where rights sued upon arise from a contract all parties to it must be joined.' *McCray v. Adams*, 529 So. 2d 1131, 1136 (Fla. Dist. Ct. App. 1988)."

See also *Fireman's Ins. Co. of Newark, New Jersey v. Vento*, 586 So.2d 89, 90 (Fla. 3d DCA 1991) (party to a contract is indispensable where action seeks rescission).

Accordingly, the court's ongoing failure to serve indispensable Anabella Soury with a copy of the judgment, the amended judgment, or the notice of trial all violated Fla. R. Jud. Admin. 2.516, which provides:

> "(h) Service of Orders.
>
> (1) A copy of all orders or judgments must be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment. No service need be made on parties against whom a default has been entered except orders setting an action for trial and final judgments that must be prepared and served as provided in

> subdivision (h)(2). The court may require that orders or judgments be prepared by a party, may require the party to furnish the court with stamped, addressed envelopes for service of the order or judgment, and may require that proposed orders and judgments be furnished to all parties before entry by the court of the order or judgment. The court may serve any order or judgment by e-mail to all attorneys who have not been excused from e-mail service and to all parties not represented by an attorney who have designated an e-mail address for service." (Italics added)

A failure to abide by that Rule entitles a party to relief from judgment under Fla. R. Civ. P. 1.540(b)(4) in *Stevens v. Nationstar Mortg., LLC*, 133 So.3d 628, 629-30 (Fla. 5th DCA 2014), which aptly held:

> "**Every pleading and paper filed in any court proceeding must be served on each party or their counsel.** See Fla. R. Jud. Admin. 2.516. This requirement is to satisfy the constitutional requirement of due process. Here, neither the notice of issue nor the order setting trial was served on Stevens. This violated *Stevens's* due process rights and requires reversal. See *Vosilla v. Rosado*, 944 So.2d 289, 294 (Fla.2006) (holding that to satisfy due process, any notice given must be reasonably calculated, under all circumstances, to apprise interested parties of pendency of action and afford them opportunity to present objections); *Heritage Casket & Vault Ind., Inc. v. Sunshine Bank*, 428 So.2d 341, 343 (Fla. 1st DCA 1983). For these reasons, we reverse the final judgment and remand this matter for further proceedings." (Italics added)

See also *Cruz v. Vineyards of Plantation, Condominium Association, Inc.*, 226 So.3d 898, 899 (Fla. 4th DCA 2017) (judgment was in violation of "due process" and "void" for "lack of service").

The foregoing authorities establish that the failure to serve an Indispensable Party could be raised as error not only by Anabella but also by Robert Sarhan.

We note that, more than a century ago, the Florida Supreme Court recognized that "a foreclosure proceeding resulting in a final decree and a sale of the mortgaged property, without the holder of the legal title being before the court will have no effect to transfer his title to the purchaser at said sale." *Jordan v. Sayre,* 24 Fla. 1, 3 So. 329, 330 (1888). If the foreclosure proceeding has no effect to transfer title because the legal title holder has not been joined, it is simply another way of saying that the foreclosure proceeding is void. **"Indispensable parties are necessary parties so essential to a suit that no final decision can be rendered without their joinder." *Hertz Corp. v. Piccolo*, 453 So. 2d 12, 14 n.3 (Florida Supreme Court 1984).**

VI. Judge Hanzman's Refusal to Allow Defense Counsel Morburger to Orally Argue Robert Sarhan's Motion Further Enhanced the Denial of Due Process

Not only was that a denial of due process, but also Judge Hanzman's conduct of the hearing on the motion for relief from judgment as void was a further denial in that he excluded any oral argument or rebuttal from Robert Sarhan or his attorney at the hearing of the motion. **Exhibit E, pages 6-7 and 22.** That additional denial of due process further rendered Judge Hanzman's order and its anomalous findings "void" as against Robert Sarhan and is a second basis for Robert Sarhan to seek reversal on appeal.

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const. Amend. 5 - *Klugh y.* U.S., 620 F. Supp. 892 (D.S.C. 1985). Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, City of Lufkin v. McVicker, 510 S.X.2d 141 (Twx.Civ.App.-Beaumone 1973). When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Omer. v. Shalala,* 30 F.3d 1307 (Cob. 1994). A JUDGMENT IS A "VOID JUDGMENT" IF THE COURT THAT RENDERED THE JUDGMENT ACTED IN A MANNER INCONSISTENT WITH DUE PROCESS *Klugh v. U.S. D.C.S.C,* 610 F. Supp. 892, 901 states: a judgment is a "void judgment" *if the court that rendered judgment... acted in a manner inconsistent with due process.*"

VII. The Denial Of The Request For An Appellate Stay Has No Precedential Significance

The Court's denial of Appellant Motion for Appellate Stay has no precedential significance. That request for a stay was subject two criteria: (1) the likelihood of success on the merits of the Appeal and (2) the lack of prejudice to Appellee from

the stay. The Appellee argued substantial prejudice, based on the case's history of prior delays. **Exhibit I page 4-7.**

Moreover, Judge Gordon, presiding at that hearing, explained to Robert Moore his rulings as follows: **Exhibit I page 17 lines 7-25:**

> "Robert Moore:
>
> Now, the case law in that memorandum of law that you just placed on your countertop.
>
> Judge Gordon:
>
> Yes, Sir.
>
> Robert Moore:
>
> States in black and white that if you are an indispensable party, which my client is, and you're not served with a judgment of foreclosure, then any sale based on that foreclosure is not valid.
>
> Judge Gordon:
>
> It sounds like pretty good **Black Letter Law**. I'm not going to grant a stay however with the procedural history of this case, but if you want to go back to the Third and ask the Third to stay it so that they can review their opinion or their judgment, that's fine by me. I just don't feel comfortable doing it at the trial level."

In other words, Judge Gordon agreed that the Sarhans' arguments as to voidness are "black letter law" but denied the stay based on the prior extended "procedural history" of delay, which is not relevant to the merits of this appeal from a void judgment. Moreover, in denying review of Judge Gordon's order denying the

stay, this Court did not include any opinion explaining the reasons for its position and therefore that decisions has no precedential significance.

A MANIFEST INJUSTICE

This Case Is A Manifest Injustice: The United States Supreme Court Has Outlined The Requirements For Plain Error (1) There Were Many "Errors;" (2) They Were "Plain;" (3) That "Affect[Ed] The Appellants Substantial Rights;" 507 U.S., At 732. And (4) The "Errors" "Seriously Affect[Ed] The Fundamental Fairness, Integrity And Public Reputation Of The Judicial Proceedings," *United States v. Olano*, 507 U.S. 725, 736, 113 S. CT. 1770, 1779(1993). quoting *United States* v. *Atkinson,* 297 U. S. 157, 160 (1936)). (quoting *United States* v. *Young, supra,* at 15, in turn. *Arthur v. King*, 500 F.3d. 1335, 1343 (11th Cir. 2007)

CONCLUSION

Robert Sarhan built this home with his two hands from the ground up 26 years ago, it is his "Nest Egg" every penny that Robert & Anabella have in their life, is in this home. To allow this home to be taken, when the judgment is void, would be a Manifest Injustice, of robbing Robert of his Life's work and causing Manifest Injustice.

Accordingly, Anabella, as mortgagor, was an Indispensable Party, not disposed of by summary judgment and instead entitled to be served, but was never served, nor was her attorney Robert L. Moore ever served with the Final Judgement

or the Amended Final Judgment of Foreclosure. That lack of service was a denial of due process, rendering the judgment "void" and entitling both Defendants, Anabella and Robert, to relief from judgment under Fla. R. Civ. P. 1.540(b)(4).

Respectfully submitted,

s/ Anabella Soury

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing and the attach appendix were served to Raul Gastesi at rgastesi@gastesi.com by US mail at 8105 NW 155th St Miami Lakes, FL 33016-5872 this 25th day of March 2020.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation of Rule 32(a)(7), Federal Rules of Appellate Procedure, in that it contains 5246 words (including words in footnotes) according to Microsoft Word 2016, the word processing system used to prepare this brief.