

Third District Court of Appeal

State of Florida

Opinion filed September 18, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1322
Lower Tribunal No. 12-7970

**Robert Sarhan and Anabella Soury,
a/k/a Anabella Sarhan,
Appellants,**

vs.

**H & H Investors, Inc.,
Appellee.**

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Michael A. Hanzman, Judge.

Robert L. Moore, for appellant Anabella Sarhan; Arthur J. Morburger, for appellant Robert Sarhan.

GASTESI, LOPEZ & MESTRE, PLLC., and Raul Gastesi, Jr., for appellee.

Before LOGUE, SCALES and GORDO, JJ.

PER CURIAM.

Affirmed.

EXHIBIT A

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

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

Plaintiff,

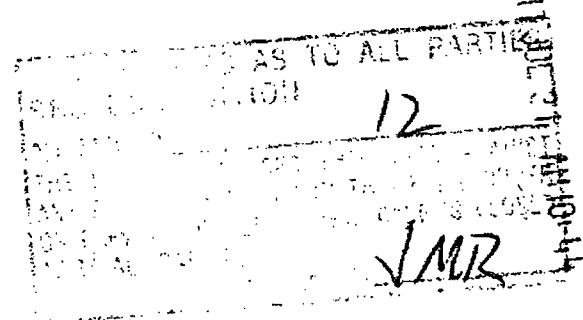
v.

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

Defendants.

GENERAL JURISDICTION DIVISION

CASE NO.: 12-07970 CA 15



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ENCLOSURE

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").

KENDRICK CAMERON

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
<u>Additional Costs:</u>	
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

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<u>Attorneys' Fees:</u> The Court reserves jurisdiction over the parties for the purpose of determining Plaintiff's reasonable attorney's fees.	RESERVE JURISDICTION
<u>Attorneys' Fees Total:</u>	
<u>Court Costs, Now Taxed:</u> The Court reserves jurisdiction over the parties for the purpose of determining Plaintiff's costs.	RESERVE JURISDICTION
<u>Less: Escrow Balance</u>	\$0.00
<u>Less: Other</u>	\$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 1/4 of the NW 1/4 of the SE 1/4 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 19 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.

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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.

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JUL 31 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 WAS DELIVERED
TO PLAINTIFF'S ATTY
IN LIEU OF MAILING

EXHIBIT B

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

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

GENERAL JURISDICTION DIVISION

CASE NO.: 12-07970 CA 15

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.

CLERK, CIRCUIT & COUNTY COURTS
CIVIL #75

2018 DEC 12 PM 3:53

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 2016	\$25,221.19 \$13,395.23
Interest only on Taxes for the year(s) of 2010 through 2014	\$7,576.27

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Additional Costs:	
Appraisal Service – Manny Mendoza Inspection 01/09/2015	\$345.00 \$200.00
	Sub-Total \$844,444.33
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 \$727,372.66
Credits provided by Lender	-\$28,176.74
	Sub-Total \$699,295.92
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 \$11,379.60
Sub-Total	\$756,694.66
	GRAND TOTAL \$756,694.66

#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.

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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.

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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.

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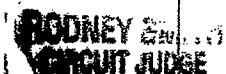
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Case No.: 2012-07970 CA 15

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


Circuit Judge


RODNEY S. SMITH
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 <u>D</u>
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 <u>MS</u>

**Additional material
from this filing is
available in the
Clerk's Office.**