

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-28

DAVID FRANK PETRANO, MARY
KATHERINE DAY-PETRANO, and
DONNA ROSS, "unknown Tenant
I,"

Appellants,

v.

DARLENE P. BAYLOR,

Appellee.

On appeal from the Circuit Court for Alachua County.
Monica J. Brasington, Judge.

April 15, 2020

PER CURIAM.

AFFIRMED.

RAY, C.J., and ROWE and TANENBAUM, JJ., concur.

APPENDIX A

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

David F. Petrano, pro se, and Mary Katherine Day-Petrano, pro se, Appellants.

Ronald A. Hertel of Chiumento Dwyer Hertel Grant & Kistemaker, PL, Palm Coast, for Appellee.

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT, IN AND
FOR ALACHUA COUNTY, FLORIDA

CASE NO.: 2012 CA 1688 MG

DARLENE P. BAYLOR,

Plaintiff,

vs.

DAVID FRANK PETRANO, an individual,
MARY KATHERINE DAY-PETRANO, an
individual, unknown Tenant I, unknown
Tenant II, and other unknown persons or
unknown spouses claiming by, through and
under any of the above named Defendants.

Defendant(s).

FINAL JUDGMENT OF FORECLOSURE AND FOR DAMAGES

THIS CAUSE came before the Court on February 1, 2017 for non-jury trial on the following claims of Plaintiff, DARLENE P. BAYLOR (hereinafter, "BAYLOR"): (1) Foreclosure of Mortgage and, in the alternative, (2) Promissory Note. The Court, having considered the pleadings, exhibits, affidavits, and other proofs filed herein, and having heard the argument of counsel, and being otherwise fully advised on the

Final Judgment of Foreclosure and for Damages

premises, makes the following findings of fact:

1. This Court has jurisdiction of and over the subject matter of this cause and over the parties to this action.
2. The address of Defendant, DAVID FRANK PETRANO, is 11502 SE HWY 301, Hawthorne, Florida 32640. The address of Defendant, MARY KATHERINE DAY-PETRANO, is 11502 SE HWY 301, Hawthorne, Florida 32640. The address of Plaintiff, DARLENE P. BAYLOR is c/o CHIUMENTO SELIS DWYER, P.L., 145 City Place, Suite 301, Palm Coast, Florida 32164.
3. The Defendants in this action have been served with a Summons and a copy of the Amended Complaint filed by the Plaintiff in this action and have answered the Amended Complaint.
4. Borrowers/Defendants, DAVID FRANK PETRANO and MARY KATHERINE DAY-PETRANO, are in breach of the Promissory Note and Mortgage (the "Loan Documents"), and are in default. Therefore, Plaintiff is entitled to the entry of Final Judgment of Foreclosure and Damages.

5. The Court has heard testimony in this case. The equities are with the Plaintiff and against the Defendants.

6. The Court finds that Plaintiff's security interest was perfected through valid execution and recordation of the Mortgage in the Public Records in and for Alachua County, Florida, O.R. Book 3967 at Page 1445.

7. Plaintiff is the prevailing party as to all Counts of her complaint.

8. Based upon the failure of the Defendants to appear at the specially set trial, the entirety of Defendants' affirmative defenses have been stricken and/or waived by the Defendants. Therefore,

IT IS ORDERED AND ADJUDGED THAT:

1. Final Judgment of foreclosure, in favor of the Plaintiff, is

GRANTED.

2. There is presently due to the Plaintiff under the Loan Documents sued upon the following sums:

| | | |
|------------------------|--|--------------|
| Principal Due on Note: | | \$148,487.59 |
|------------------------|--|--------------|

| | |
|--|---------------------|
| Accrued Interest on Note (1840 days with per diem of \$24.41): | \$44,914.40 |
| Late Fees on Note (\$63.30/month for 54 months): | \$3,418.20 |
| Total Amount Due under Note as of February 1, 2017 (not including attorneys' fees and costs): | \$196,820.19 |

Thus, Plaintiff, DARLENE P. BAYLOR, is awarded a final judgment of foreclosure against Defendants, DAVID FRANK PETRANO and MARY KATHERINE DAY-PETRANO, in the total amount of **\$196,820.19**, which shall bear interest at the rate of 4.97% per annum.

3. Specifically, Plaintiff, DARLENE P. BAYLOR, shall recover from Defendants, DAVID FRANK PETRANO and MARY KATHERINE DAY-PETRANO, the principal liquidated sum of \$148,487.59, plus \$44,914.40 in prejudgment interest, plus \$3,418.20 in late fees, for a total sum of **\$196,820.19**, which shall bear interest at the rate of 4.97% per year, for which let execution issue. This sum is exclusive of awardable costs and attorney's fees, for which entitlement

to and amount shall be determined by the court upon motion and hearing.

4. Pursuant to the November 10, 2015 Order of Judge Catherine Peek McEwen, entered in the United States Bankruptcy Court, Middle District of Florida, Tampa Division, Cases No. 8:14-bk-03348-CPM MARY, 8:14-bk-01368-CPM (Cases Jointly Administered under Case No. 8:14-bk-03349-CPM), this Final Judgment “shall not be enforced without further relief from [the Bankruptcy] Court.” As such, the requested foreclosure sale date and time (see, paragraph 7 hereto) shall be set via further Order of this Court, pending an Order permitting same issuing from the Bankruptcy Court.

5. The Mortgage sued on by the Plaintiff in this cause constitutes a valid and perfected first lien on the Property, and the Mortgage is in default as alleged in the complaint.

6. Plaintiff holds a lien for the total sum superior to any claim or estate of Defendants on the real and personal property described in the Mortgage (together herein described as the “Property”) located in

Alachua County, Florida, which is more particularly described as:

PARCEL D: A PARCEL OF LAND LOCATED IN SECTION 10, TOWNSHIP 11 SOUTH, RANGE 22 EAST, ALACHUA COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 4" X 4" CONCRETE MONUMENT MARKING THE SOUTHWEST CORNER OF SECTION 10, TOWNSHIP 11 SOUTH, RANGE 22 EAST, ALACHUA COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF SAID SECTION 10, NORTH 87°27'09" EAST, A DISTANCE OF 1314.47 FEET TO A FOUND 4" X 4" CONCRETE MONUMENT; THENCE CONTINUE ALONG SAID LINE NORTH 87°27'09" EAST, A DISTANCE OF 198.05 FEET TO A POINT MARKING THE INTERSECTION OF SAID SOUTH LINE WITH THE WEST RIGHT-OF-WAY LINE OF THE S.A.L. RAILROAD, THENCE ALONG THE WEST RIGHT-OF-WAY LINE NORTH 06°47'39" EAST, A DISTANCE OF 1648.57 FEET TO A SET 5/8" REBAR AND CAP (#3524) MARKING THE POINT OF BEGINNING; THENCE CONTINUE NORTH 06°47'39" EAST, A DISTANCE OF 309.58 FEET TO A FOUND 5/8" REBAR AND CAP (#3524); THENCE SOUTH 87°26'00" WEST, A DISTANCE OF 735.00 FEET TO A SET 5/8" REBAR AND CAP (#3524); THENCE SOUTH 01°26'21" EAST, A DISTANCE OF 305.52 FEET TO A SET 5/8" REBAR AND CAP (#3524); THENCE NORTH 87°26'00" EAST, A DISTANCE OF 690.65 FEET TO THE POINT OF BEGINNING.

7. If the total sum above with interest at the rate prescribed by law, and all costs accrued subsequent to the Final Judgment, are not paid in full, the Clerk of this Court shall sell the Property at public sale on

TBD, 20____, at 11:00 a.m., or soon thereafter, to the highest bidder for cash, except as set forth in this Final Judgment, online at <http://www.alachua.realforeclose.com>, in accordance with §45.031, Fla. Stat. Prior to the sale, the Plaintiff must pay the sale fee required by §45.035(1), Fla.Stat., and the online sale may be conducted even if the Plaintiff does not participate.

8. Plaintiff may assign this Final Judgment and her credit bid by the filing of a Notice of Assignment without further order of this Court.

9. 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 at the foreclosure sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum due under this Final Judgment together with interest, attorneys fees and costs accruing subsequent to this Final Judgment, or such part of it, as is necessary to pay the bid in full.

10. After confirmation of the sale, whether confirmation is by the Clerk's filing of the Certificate of Title or by Order of this Court ruling

on objections to the sale, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of Plaintiff's costs; second, Plaintiff's attorneys' fees; third, the total sum due to Plaintiff plus interest at the rate prescribed by law from this date to the date of the sale; and last, by retaining any remaining amount pending the further order of this Court. The highest bidder at the sale shall pay the documentary stamps affixed to the Certificate of Title and the cost, if any, of recording the Certificate of Title.

11. Notice pursuant to §45.031, Fla. Stat.:

**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 LIENHOLDER
CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE
SALE, YOU MUST FILE 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.**

12. On filing the Certificate of Title, Defendants and all persons claiming under or against Defendants since the filing of the Notice of

Lis Pendens shall be forever foreclosed of all right, title, interest, estate, or claim in the Property being sold, and shall be forever barred and foreclosed of any and all equity or right of redemption in and to said Property.

13. After the conclusion of the sale, whether confirmation is by the Clerk's filing of the Certificate of Title or by Order of this Court ruling on objections to the sale, the purchaser at the sale, its agents, representatives, successors or assigns, shall without delay be let into possession of the Property as conveyed, and should anyone not deliver possession of the Property to the purchaser, the Clerk shall, upon request and without further order of the Court, immediately issue a writ of possession and deliver same to the sheriff for execution.

14. Any advances or additional costs of the Plaintiff may be added to the amount of Plaintiff's judgment prior to the public sale by filing with the Clerk of Court an affidavit of the Plaintiff which is served on all parties, including defaulted parties, prior to the date of the sale, which affidavit includes proof of payment of any such advances or

additional costs.

15. Jurisdiction of this action is retained to enter further orders as are proper including, without limitation, deficiency judgments, sales information as required in paragraph 7 of this order, determination of entitlement and amounts of attorneys' fees and costs, liquidation of attorneys' fees and costs, and writs of possession.

DONE AND ORDERED in Alachua County, Florida this 1st day of February, 2017.

Monica J. Brasington

MONICA J. BRASINGTON
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by via E-Mail on this 1st day of February, 2017 to the following:

David Frank Petrano
dpetrano@yahoo.com

Mary Katherine Day-Petrano
ponyhunterjumper@yahoo.com

Ronald A. Hertel, Esq.
rhertel@palmcoastlaw.com
karolyn@palmcoastlaw.com

Ruby W. Dunaway

By: Ruby Dunaway, Judicial Assistant

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT, IN AND
FOR ALACHUA COUNTY, FLORIDA

CASE NO.: 2012 CA 1688 MG

DARLENE P. BAYLOR,

Plaintiff,

vs.

DAVID FRANK PETRANO, an individual,
MARY KATHERINE DAY-PETRANO, an
individual, unknown Tenant I, unknown
Tenant II, and other unknown persons or
unknown spouses claiming by, through and
under any of the above named Defendants.

Defendant(s).

**ORDER AMENDING FINAL JUDGMENT OF FORECLOSURE
AND FOR DAMAGES**

THIS CAUSE came before the Court for hearing on February 26,
2018, on Plaintiff, DARLENE P. BAYLOR's, Motion to Amend Final
Judgment to Set Foreclosure Sale Date, and the Court, having
considered the pleadings, having heard the argument of counsel and the
parties, and being otherwise fully advised on the premises hereby finds
that:

1. After trial, on February 1, 2017, this Court entered its Final Judgment of Foreclosure and for Damages in the instant case, granting both a monetary judgment and finding the right to foreclose a lien on real property within the jurisdiction of this Court.
2. The Final Judgment of Foreclosure and for Damages specifies on its 5th page, 4th paragraph, that, “the requested foreclosure sale date and time ... shall be set via further Order of this Court, pending an Order permitting same issuing from the Bankruptcy Court.”
3. On November 9, 2017, United States Bankruptcy Court Judge Catherine Peek McEwen, in her Order Granting Further Relief, amended her prior order granting partial relief from stay to now “allow the Circuit Court in and for Alachua County Florida to amend the Final Judgment to set a date for foreclosure ... The sale may be set no sooner than October 30, 2018[.]”
4. As such, the Court finds that Plaintiff is entitled to the relief

sought in her Motion to Amend Final Judgment to Set Foreclosure Sale Date, namely, the setting of a foreclosure sale to take place no sooner than October 30, 2018.

As such it is

ORDERED AND ADJUDGED THAT

1. Plaintiff's Motion to Amend Final Judgment to Set Foreclosure Sale Date is hereby **GRANTED**.
2. The Final Judgment of Foreclosure and for Damages in this case is hereby amended to state, on its page 6, paragraph 7,

that:

7. If the total sum above with interest at the rate prescribed by law, and all costs accrued subsequent to the Final Judgment, are not paid in full, the Clerk of this Court shall sell the Property at public sale on October 30, 2018, at 11:00 a.m., or soon thereafter, to the highest bidder for cash online at <http://www.alachua.realforeclose.com>, in accordance with Fla.Stat. 45.031. Prior to the sale, the Plaintiff must pay the sale fee required by Fla.Stat. 45.035(1), and the online sale may be conducted even if the Plaintiff does not participate.
3. The remaining portions of the February 1, 2017 Final Judgment of Foreclosure and for Damages are remain

unaltered by virtue of this Order.

DONE AND ORDERED in Alachua County, Florida this 26th day
of February, 2018.

Monica J. Brasington

MONICA J. BRASINGTON
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by via E-Mail on
this 26th day of February, 2018 to the following:

David Frank Petrano
dpetrano@yahoo.com

Mary Katherine Day-Petrano
ponyhunterjumper@yahoo.com

Ronald A. Hertel, Esq.
rhertel@palmcoastlaw.com

Ruby S. Dunaway

By: Ruby Dunaway, Judicial Assistant