

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

MARCH 07, 2018

JAVIER A. CARRILLO AND MAYRA E. CASE NO.: 3D17-1281

FARIAS,

Appellant(s)/Petitioner(s),

vs.

L.T. NO.: 09-6638

U.S. BANK NATIONAL ASSOCIATION,

et al.,

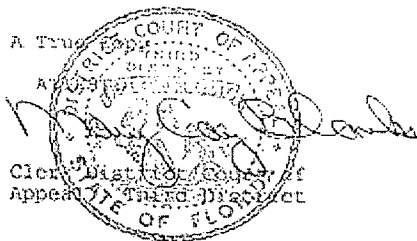
Appellee(s)/Respondent(s),

Upon consideration, appellants' motion to strike against the appellee's response to motion for rehearing en banc is hereby denied.

Upon consideration, Javier A. Carrillo and Myra Elizabeth Jimenez a/k/a Myra E. Farias's motion for rehearing en banc is treated as having included a motion for rehearing. The motion for rehearing is denied.

ROTHENBERG, C.J., and LOGUE and EMAS, JJ., concur.

The motion for rehearing en banc is denied.



cc: Kimberly S. Mello

Vitaliy Kats

Javier A. Carrillo

Third District Court of Appeal

State of Florida

Opinion filed January 10, 2018.

Not final until disposition of timely filed motion for rehearing.

No. 3D17-1281

Lower Tribunal No. 09-6638

Javier A. Carrillo and Mayra E. Farias,
Appellants,

vs.

U. S. Bank National Association, et al.,
Appellees.

An Appeal under Florida Rule of Appellate Procedure 9.315(a) from a non-final order from the Circuit Court for Miami-Dade County, Monica Gordo, Judge.

Javier A. Carrillo and Mayra E. Farias, in proper persons.

Greenberg Traurig, and Kimberly S. Mello and Vitaliy Kats (Tampa), for appellee U.S. Bank National Association, as Trustee.

Before ROTHENBERG, C.J., and EMAS and LOGUE, JJ.

PER CURIAM.

Affirmed.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION
CASE NO. 09-06638-CA 02

Indymac
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE LXS 2006-16N

Plaintiff,

vs.

MAYRA FARIAS; JAVIER A. CARRILLO, KNOWN
SPOUSE OF MAYRA FARIAS; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC., AS
NOMINEE FOR INDYMAC FEDERAL BANK, FSB,
SUCCESSOR IN INTEREST TO INDYMAC BANK, F.S.B.;
UNKNOWN PERSON(S) IN POSSESSION OF THE
SUBJECT PROPERTY;

Defendants.

FOR CLERK'S USE ONLY

\$ 23,742.54

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DUPLICATE FINAL JUDGMENT OF FORECLOSURE
(Pursuant to Administrative Order 09-09 A1)

THIS ACTION was heard before the Court on November 22, 2011. On the evidence presented,
IT IS ORDERED AND ADJUDGED that:

1. The Plaintiff's Judgment is **GRANTED**. Service of process has been duly and regularly obtained over Defendants: MAYRA FARIAS, JAVIER A. CARRILLO, KNOWN SPOUSE OF MAYRA FARIAS, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR INDYMAC FEDERAL BANK, FSB, SUCCESSOR IN INTEREST TO INDYMAC BANK, F.S.B., UNKNOWN PERSON(S) IN POSSESSION OF THE SUBJECT PROPERTY, .
2. **Amounts Due.** There is due and owing to the Plaintiff, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE LXS 2006-16N, the following:

Principal due on the note secured by the mortgage foreclosed	\$	253,893.14
Interest with per diem at \$21.69 to date of this judgment 11/22/11	\$	30,719.94
Late Charges	\$	101.14
Title Search expenses	\$	390.00

Escrow Advances:

Taxes

2008-\$5,636.86
2009-\$4,320.83
2010-\$3,404.38
2011-\$1,542.64
Hazard Insurance
2008-\$7,913.47
2009-\$7,604.18
2010-\$6,229.30
2011-\$6,569.71

Escrow Payments

\$ 14,904.71

\$ 28,316.66

\$ (687.55)

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION
NUMBER 12 3
THE COURT THEREBY THIS CASE ADJUDGED
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDER(S). THIS CASE IS CLOSED
AS TO ALL PARTIES.
Judge's Initials 96

09-01061 OWB

Court Costs:

Filing fee	\$	346.00
Service of process	\$	180.00

Additional Costs:

BPO	\$	925.00
Property Inspections	\$	396.00

SUBTOTAL:

Attorney's Foreclosure fees	\$	329,485.04
Attorney's Contested fees	\$	1,300.00
	\$	2,957.50

GRAND TOTAL:

\$ 333,742.54

3. **Interest.** The grand total amount referenced in Paragraph 2 shall bear interest from this date forward at the prevailing legal rate of interest.
4. **Lien on Property.** Plaintiff, whose address is c/o ONEWEST BANK, FSB, 155 North Lake Avenue, 3rd Floor, Pasadena, California 91101, holds a lien for the total sum specified in Paragraph 2 herein. 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, with the exception of any assessments that are superior pursuant to Florida Statutes, Section 718.116. The plaintiff's lien encumbers the subject property located in MIAMI-DADE County, Florida and described as:

LOT 8 BLOCK 35 OF FAIRWAY ESTATES SECTION 7, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 98 PAGE 67 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

a/k/a 11011 SW 160TH STREET, MIAMI, FLORIDA 33157-

5. **Sale of property.** If the grand total amount with interest at the rate described in Paragraph 3 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 **01 JAN 1 8 2012**, to the highest bidder for cash, except as prescribed in Paragraph 6, at:

☐ Room 908, 140 West Flagler Street, Miami, Florida at 11:00 a.m.

☒ www.miamidade.realforeclose.com, the Clerk's website for online auctions at 9:00 a.m.

after having first given notice as required by Section 45.031, Florida Statutes.

6. **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. 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. The Clerk shall receive the service charge imposed in Section 45.031, Florida Statutes, for services in making, recording, and certifying the sale and title that shall be assessed as costs.
7. **Right of Redemption.** On filing of the Certificate of Sale, defendant's right of redemption as proscribed by Florida Statutes, Section 45.0315 shall be terminated.
8. **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. During the sixty (60) days after the Clerk issues the certificate of disbursements, the Clerk shall hold the surplus pending further Order of this Court.

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SALE DATE AUTHORIZED

9. **Right of Possession.** Upon filing of the Certificate of Title, defendant and all persons claiming under or against defendant since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property and the purchaser at sale shall be let into possession of the property, subject to the provisions of the "Protecting Tenant At Foreclosure Act of 2009".

10. **Attorney Fees \$4,257.50.** The Court finds, based upon the affidavits presented and upon inquiry of counsel for the plaintiff, that were reasonably expended by plaintiff's counsel at an hourly rate that is appropriate. PLAINTIFF'S COUNSEL REPRESENTS THAT THE ATTORNEY FEE AWARDED DOES NOT EXCEED ITS CONTRACT FEE WITH THE PLAINTIFF. The Court finds that there are no reduction or enhancement factors for consideration by the Court pursuant to Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985).

11. NOTICE PURSUANT TO AMENDMENT TO SECTION, 45.031, FLA. ST. (2006)

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 PURUSANT TO THE FINAL JUDGMENT.

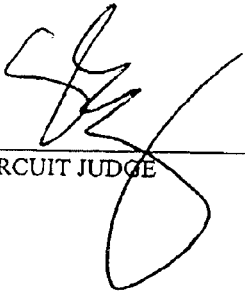
IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS 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, 73 WEST FLAGLER STREET, RM 135, MIAMI, FLORIDA 33130 (TELEPHONE: 305 3755943), 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, PREFERABLEY 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 DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, 123 NW FIRST AVENUE, 3RD FLOOR, MIAMI, FL 33128 PHONE: 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 MIAMI-DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

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

DONE AND ORDERED in Chambers at Miami, MIAMI-DADE County, Florida, this 12 day of

Dec, 2011.


CIRCUIT JUDGE

Copies furnished to the parties listed on the attached service list:

Final Judgment
Case No. 09-06638-CA 02

THOMAS J. CROWDER, ESQ.
KAHANE & ASSOCIATES, P.A.
8201 PETERS ROAD, STE.3000
PLANTATION, FL 33324

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

MAYRA FARIAS
JAVIER A. CARRILLO, KNOWN SPOUSE OF MAYRA FARIAS
c/o SERGIO CRUZ, ESQ.,
245 SE 1ST STREET
MIAMI, FLORIDA 33131

UNKNOWN PERSON(S) IN POSSESSION OF THE SUBJECT PROPERTY
11011 SW 160TH STREET
MIAMI, FLORIDA 33157

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
AS NOMINEE FOR INDYMAC FEDERAL BANK, FSB,
SUCCESSOR IN INTEREST TO INDYMAC BANK, F.S.B.
c/o CT CORPORATION
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

09-01061 OWB