

Appendix A

**Supreme Court of Florida
Statement
Case No: SC 22-1 715
January 4, 2023**

Supreme Court of Florida

WEDNESDAY, JANUARY 3, 2023

CASE NO.: SC22-1 716

Lower Tribunal No(s):

2D22-413; 582015CA001828XXXANC

JAMES GIEHL

vs.

BANK OF AMERICA,
NATIONAL ASSOCIATION

Petitioner(s)

Respondent(s)

This case is hereby dismissed. This court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without written opinion or explanation or that merely cites an authority that is not case pending review in or reversed or quashed by, this Court. See *Wheeler v. State*, 132 So 3d 1110 (Fla 2014); *Jackson v. State* 926 So 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*; 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy
Test:

(Supreme Court Seal)

 /s/
John A. Tomasino
Clerk Supreme Court

CASE NO,: SC22-1716

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lc

Served:

STEVEN B GREENFIELD

JAMES GIEHL

HON. KAREN E. RUSHING, CLERK

HON. MARY BETH KUENZEL, CLERK

HON. ANDREA WATT MCHUGH, JUDGE

Appendix B

**Florida Second District Court of Appeals
Order, Per Curiam & Mandate
Case No: 2D 22-413
November 9, 2022 & January 13, 2023**

MANDATE

From

**DISTRICT COURT OF APPEAL OF THE STATE OF
FLORIDA**

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS
COURT BY APPEAL, AND AFTER DUE CONSIDERATION
THE COURT HAVING ISSUED ITS OPINION;

YOU ARE HEREBY COMMANDED THAT SUCH
FURTHER PROCEEDINGS BE HAD IN SAID CAUSE, IF
REQUIRED, IN ACCORDANCE WITH THE OPINION OF
THIS COURT ATTACHED HERETO AND INCORPORATED
AS PART OF THIS OPINION OF THIS COURT ATTACHED
HERETO AND INCORPORATED AS PART OF THIS ORDER,
AND WITH THE RULES OF PROCEDURE AND LAWS OF
THE STATE OF FLORIDA.

WITNESS THE HONORABLE ROBERT MORRIS CHIEF
JUDGE OF THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA, SECOND DISTRICT, AND SEAL OF
THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: January 13, 2023

SECOND DCA CASE NO. 22-0413

COUNTY OF ORIGIN: Sarasota

LOWER TRIBUNAL CASE NO. 2015 CA 001828 NC

CASE STYLE: JAMES GIEHL v. BANK OF
AMERICA, NATIONAL

ASSOCIATION

(Seal of Court)

/s/

Mary

Elizabeth Kuenzel

Clerk

CC: (without attached opinion)
BRIAN L. ROSALER. ESQ
ESQ.
JAMES GIEHL

STEVEN B GREENFIELD,

Mep

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JAMES GIEHL,
Appellant,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION,
Appellee,

No. 2D22-413

November 9, 2022

Appeal pursuant to Fla. R. App. P. 130 from the
Circuit Court of Sarasota County, Andrea
McHugh, Judge.

James Giehl, Pro Se

Steven B. Greenfield of Greenfield Law Group,
P.A., Delray Beach, for Appellee.

PER CURIAM
Affirmed

NORTHCUTT, VILLANTI, and ROTHSTEIN-
YOUAKIM, Concur.

Opinion subject to revision prior to official
publication.

Appendix C

**Sarasota Circuit Court
Order and Opinion
Case No: 2015 CA 1828 NC
January 11, 2022**

(STAMPED: RECORDED IN OFFICIAL RECORDS
INSTRUMENT# 2022006359 5 PG(S)
1/12/2022 2:10PM
KAREN E. RUSHING)

**IN THE CIRCUIT COURT OF THE TWELFTH
JUDICIAL CIRCUIT AND OF SARASOTA
COUNTY, FLORIDA**

**BANK OF AMERICA, NATIONAL
ASSOCIATION,
Plaintiff,**

Case No: 2015CA1828NC

v.

**JASON YOUNG A/K/A JASON ALLEN
YOUNG
SIENNA CONDOMINIUM
ASSOCIATION, INC.;
UNKNOWN SPOUSE OF JASON
YOUNG A/K/A JASON ALLEN YOUNG;
CITY OF SARASOTA, A MUNICIPAL
CORPORATION OF THE STATE OF
FLORIDA; UNKNOWN TENANT 1;
UNKNOWN TENANT 2; UNKNOWN
TENANT 3; UNKNOWN TENANT 4,**

Defendants, /

**ORDER 1) GRANTING PLAINTIFF'S
MOTION TO DISSOLVE RECORDED
LIS PENDENS AND 2) DENYING
DEFENDANT JAMES GIEHL'S
MOTION FOR 1.540 RELIEF**

THIS CAUSE came before the court for hearing on December 14, 2021 upon Defendant James Giehl's Updated Motion for 1.540 Relief and Further Actions under Florida Rules of Civil Procedure Rule 1.540, Defendant's Updated Liss Amount(s) to James Giehl and Plaintiff's Motion to Dissolve Recorded Lis Pendens filed by James Giehl and Requests this Court to Order Defendant to Take No Further Action, File No Further Pleadings or Record Any Further Instrument in this Case or Against the Property. The Court having reviewed the filings DIN 233, 239, 241, 242, 254, 263, 265, and 266 finds as follows:

Defendant James Giehl ("Giehl") moves for relief under Fla. R. Civ. P. 1.540, requesting the Court to vacate the judgement of foreclosure in this case, arguing that the judgement is void. The foreclosure judgement recorded on April 15, 2019 in favor of Plaintiff, Bank of America, National Association, ("the Bank"). Prior to the instant foreclosure case, Giehl purchased the subject property, a condominium unit, at a foreclosure sale in Sarasota County Case No. 2014CA2706, wherein Sierra

Condominium Association, Inc. (“Sienna”) foreclosed on the unit owned by Jason Young (“Young”).

Giehl argues that the 2014 judgement obtained by Sienna extinguished the Bank’s mortgage lien and therefore he bought the condo free and clear. Giehl asserts that the Bank’s pursuit of this 2015 foreclosure case (1) “violates” the 2014 judgement; 2) ignores his rights as bona fide purchaser; 3) ignores the res judicata doctrine in relation to the 2012 CA 1547 [but that was an earlier attempt by the Bank to foreclose the same mortgage that was ultimately dismissed by Judge Rapkin for lack of prosecution]; 4) violates his right to restitution as a “victim” because of the Bank’s unjust enrichment at Giehl’s expense and knowingly ignoring the 2014 judgement; 5) violates a principle that a property cannot be foreclosed against multiple times; and 6) resulted in the issuance and recording of “false” documents purporting to convey title to the condo to the Bank.

Giehl’s arguments are rooted in the faulty premise that Sienna held a lien for assessments on the unit superior to the mortgage lien of the Bank. The following timeline, as well as *Bank of America v.*

Kipps Colony II Condominium Assoc., Inc., 201 So.
3d 670 (Fla 2d DCA 2016) demonstrates that Giehl is
incorrect.

June 26, 2006- Sienna Park Declaration of
Condominium recorded.

Oct. 5, 2006- Deed to Young for condo unit and
Bank's mortgage financing purchase recorded.

May 20, 2013- Sienna's claim of assessment lien
recorded.

May 7, 2014-Sienna files lien foreclosure action (2014
CA 2706), Bank is not named as a defendant.

Oct, 31, 2014 – Clerk's certificate of title after
foreclosure sale issued to Giehl.

April 13, 2015- Bank files mortgage foreclosure (2015
CA 1828). Giehl is not named as defendant, although
the complaint acknowledges that Sienna may claim
an interest because of the judgement in 2014 CA
2706).

Oct. 12, 2017 -Bank granted leave to amend
complaint to add Giehl as defendant.

Nov. 15, 2018 – Order rendered granting Bank's
motion for judicial default against defendants,
including Giehl, who was served publication.

May 27, 2019 – Summary judgment entered for Bank
May 1, 2019- Foreclosure sale.

Aug 14, 2019- Order denying Giehl's objection to
sale.

Aug. 15, 2019-Clerk issues certificate of title after sale to Bank. Sept. 11, 2019 – Giehl files notice of appeal.

Feb. 11, 2021- Mandate issued affirming per curiam (appeal of the judgment was dismissed as untimely, affirmance was of order denying objection to sale).

In *Kipps Colony*, after a general discussion of the rules of lien priority, the court quotes.

718.116 (5)(a), Fla. Stat., regarding the priority of condo assessment liens:

The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. *However, as to first mortgages of record, the (condominium association's) lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located (Emphasis added.) Id. at 675.*

In the present case, because the Bank's first mortgage was recorded in 2006 and Sienna's was recorded in 2013, Sienna's lien was inferior to the Bank's lien. Therefore, Sienna was not required to

name the Bank as a defendant in the 2014 action- it was foreclosing its inferior lien. In his 1.540(b) motion, Giehl describes his efforts to research other liens that might be on the condo unit before the clerk's sale. However, because the Bank was not party to the action and had a superior lien, the 2014 judgement did not extinguish the Bank's mortgage lien. While the impact on Giehl is unfortunate, the Bank was not legally required to litigate its interest in the Sienna foreclosure action, and nothing in Sienna foreclosure impacted the superiority of the Bank's lien. See *Kipps Colony* at 676.

Therefore, Giehl's claims all fail because they germinate from the same faulty premise. Giehl is not entitled to relief under Rule 1.540(b). Generally, a judgement is void if: 1) the trial court lacks subject matter jurisdiction; 2) the trial court lacks personal jurisdiction over the party; or 3) if, in the proceedings leading up to the judgement, there is a violation of due process guarantee of notice and an opportunity to be heard. *Tannebaum v. Shea*, 133 So. 3d 1056, 1061 (Fla 4th DCA 2014), *Tannebaum v. Shea*, 133 So. 3d 1056, 1061 (Fla 4th DCA 2014). "Where,

however, the court is legally organized and has jurisdiction of the subject matter and the adverse parties are given an opportunity to be heard, then errors, irregularities, or wrongdoing in proceedings, short of illegal deprivation of (an) opportunity to be heard, will not render the judgement void.”

Tannenbaum, 133 So. 3d at 1061 (internal quotations omitted).” Giehl has not alleged or shown that the foreclosure judgement is void for the purposes of Rule 1.540(b) relief.

Giehl filed lis pendens in this case at DIN 222 based upon his motion for Rule 1.540(b) relief in which the Court is now denying. Thus, Plaintiff’s motion to dissolve the lis pendens is granted and the lis pendens is dissolved.

The Court declines the Bank’s request for an order enjoining Giehl from filing anything further in the case. As stated in *Harris v. Gattie*, 263 So. 3d 829, 831 (Fla. 2d DCA 2019): In the context of sanctioning a pro se litigant by barring further pro se pleadings, the supreme court has recognized that there must be a balance between a litigant’s right of

access to the courts and any abuse of that process.”
The Court cannot find based upon a careful
examination of the court file that Giehl has abused
the process and this does not grant the relief the
Bank requests.

For the foregoing reasons, it is **HEREBY
ORDERED:**

1. Defendant James Giehl’s Updated Motion for
1.540 Relief and Further Actions under

Florida Rules of Civil Procedure Rule 1.540,
Defendant’s Updated Loss Amount(s) to James
Giehl is **DENIED** and no relief is granted.
2. Plaintiff’s Motion to Dissolve Recorded Lis
Pendens filed by James Giehl and

Requests for this Court to Order Defendant to Take
No Further Action, File No Further Pleadings or
Record Any Further Instrument in this Case or
Against the property is **GRANTED as to the lis
pendens and DENIED as to any other relief
requested.**

DONE AND ORDERED in Chambers, in Sarasota
County, Florida of this 11th day of January, 2022.

_____/s/_____

ANDREA MCHUGH

CIRCUIT JUDGE