

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

SunTrust Mortgage, Inc.,

Petitioner,

CASE NO.: 2015-CA-8367-O

v.

**Tuscany Ridge Homeowners Association,
Abpaymar, LLC, Jacquessin Pierre,
and Mirene King,**

Respondents.

Petition for Writ of Certiorari from an
Order Denying Motion for Relief
from Judgment, County Court in and
for Orange County, Florida,
Andrew L. Cameron, County Court Judge.

David S. Hendrix, Esq., and
Christian M. Leger, Esq.,
for Petitioner.

Mark P. Stopa, Esq.,
for Respondent.

Before CARSTEN, SCHREIBER, and J. RODRIGUEZ, J.J.

PER CURIAM.

Petitioner SunTrust Mortgage, Inc., seeks review of an order denying SunTrust's motion for relief from final judgment. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(2). Because the final judgment of foreclosure entered in the county court purported to extinguish a superior lien, the final judgment is void, and we grant the petition for writ of certiorari.

On March 1, 2016, the Court stayed this proceeding pending the Second District Court of Appeal's decision in a nearly identical case. The Second District has now ruled in *Bank of America*,

N.A. v. Kipps Colony II Condominium Ass'n, Case Nos. 2D14-858, 2D14-4436, 2016 WL 3766582 (Fla. 2d DCA July 16, 2016), and we grant SunTrust's motion to lift the stay.

In 2012, Tuscany Ridge Homeowners Association filed a complaint in county court to foreclose its claim of lien for homeowner assessments (the "Foreclosure Action"). SunTrust had recorded two mortgages on the property and was named as a defendant and answered the complaint. One of SunTrust's mortgages was for \$675,000 and was recorded before Tuscany Ridge's lien (the "First Mortgage"), and the other SunTrust mortgage was for \$45,000 and was recorded after Tuscany Ridge's lien (the "Second Mortgage"). The complaint in the Foreclosure Action only named the Second Mortgage and did not mention the First Mortgage.

On August 29, 2012, the county court entered a Final Summary Judgment of Foreclosure that stated, "Plaintiff holds a lien for the total sum specified in paragraph 1, superior to all claims or estates of the Defendants on the following described property" (Pet'r App. Ex. 7 at Ex. E ¶ 2.) It continued, "On filing the certificate of sale, Defendants and all persons claiming under or against them since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property." (*Id.* at Ex. E ¶ 6.) At the foreclosure sale, Respondent Abpaymar bought the property for \$49,500.

After the foreclosure sale, Abpaymar filed an action in this circuit court seeking to quiet title to the property (the "Quiet Title Action"). SunTrust was a named defendant in the Quiet Title Action and was served, but defaulted. The Default Judgment was entered on December 14, 2012.

On May 31, 2013, SunTrust served a motion to vacate the default judgment in the Quiet Title Action. SunTrust argued that the judgment was void for two reasons: the complaint in the Quiet Title Action did not state a cause of action, and SunTrust's due process rights were violated

because the Final Default Judgment awarded relief beyond what was requested in the complaint. The circuit court judge denied the motion to vacate the default judgment.

SunTrust then filed a motion for rehearing, arguing the same grounds as in its motion to vacate, but adding that the Foreclosure Judgment in the Foreclosure Action lacked jurisdiction because it ordered relief beyond what was requested in the Foreclosure Action complaint because the Foreclosure Action complaint did not mention the First Mortgage. SunTrust's Motion for Rehearing was denied without comment.

SunTrust appealed the order denying the motion to vacate the default judgment, and the Fifth District Court of Appeal per curiam affirmed on January 27, 2015.

Then, on February 26, 2015, SunTrust came back to this Foreclosure Action and served a Motion for Relief from Final Judgment. SunTrust argued that the relief granted in the Final Summary Judgment of Foreclosure exceeded the relief sought in the complaint, and was therefore without jurisdiction and void. The county court denied the motion on June 23, 2015, and SunTrust now seeks review of the denial in this Court.

In a certiorari proceeding, the circuit court is limited to determining whether the lower tribunal's decision was supported by competent substantial evidence, whether there was a departure from the essential requirements of the law, and whether procedural due process was accorded. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

In *Bank of America, N.A. v. Kipps Colony II Condominium Ass'n*, the condominium association filed a foreclosure action against the owners for their failure to pay the assessments. 2016 WL 3766582 at *1. The complaint listed a mortgage held by the bank that was recorded after the association's lien and named the bank as a defendant, but did not list that same bank's other mortgage recorded before the association's lien. *Id.* After a default was entered against the bank,

the association moved for summary judgment, and the court granted a final summary judgment of foreclosure that stated that the association's lien was superior to any of the defendants' right, title, interest or claim and that the property would be sold free and clear of all of the defendants' claims. *Id.* Inland Assets purchased the property at the foreclosure sale, was issued a certificate of title, and filed a quiet title action against the bank and the prior owners. *Id.* The bank also defaulted in the quiet title action, and Inland Assets received a quiet title judgment that it was the owner of the property free and clear of any of the bank's liens, including the first mortgage. *Id.* at *2.

The bank then filed a motion to quash service of process, vacate the default, and set aside the summary final judgment of foreclosure in the foreclosure action. *Id.* The trial court denied the motion, and the bank appealed. *Id.* The Second District held that the trial court lacked jurisdiction to foreclose the bank's first mortgage because that mortgage was superior to the association's lien. *Id.* at *4. The first mortgage was recorded before the association's lien, and thus the foreclosure did not terminate it, as a foreclosure of an association's lien only extinguishes junior liens. *Id.* "The court lacked jurisdiction to foreclose Bank of America's first mortgage; the final judgment is legally ineffective and a nullity, creating no binding obligation." *Id.* The final judgment was void due to this lack of jurisdiction, not voidable. *Id.* Thus, the appellate court reversed the trial court's order denying the motion for relief from judgment. *Id.* at *5. The court stated that the quiet title judgment did not previously resolve this issue and noted that Florida Rule of Civil Procedure 1.540 permits relief from a final judgment when that judgment is reversed. *Id.*

Here, the final summary judgment of foreclosure purported to extinguish the First Mortgage. But that First Mortgage was superior to Tuscany Ridge's lien because it was recorded before the lien. Under *Bank of America*, the final summary judgment of foreclosure is void because it purported to extinguish a superior lien.

Abpaymar argues, among other things, that collateral estoppel precludes SunTrust from prevailing on its motion for relief from final judgment. SunTrust contends that collateral estoppel does not apply because the issues, claims, and the relief it seeks in the Foreclosure Action are different from that in the Quiet Title Action.

Collateral estoppel “bars relitigation of specific issues—‘that is to say points and questions’—that were actually litigated and decided in the former suit.” *Zikofsky v. Mktg. 10, Inc.*, 904 So. 2d 520, 525 (Fla. 4th DCA 2005) (quoting *Gordon v. Gordon*, 59 So. 2d 40, 44 (Fla. 1952)). Collateral estoppel has five elements: (1) identical issues; “(2) the issue was a critical and necessary part of the prior determination; (3) there was a full and fair opportunity to litigate the issue;” (4) identical parties; and (5) the issue was litigated.” *Marquardt v. State*, 156 So. 3d 464, 481 (Fla. 2015), *reh’g denied* (Apr. 17, 2015).

In the Quiet Title Action, SunTrust consistently argued that the court in the Foreclosure Action lacked jurisdiction to enter relief regarding the First Mortgage because the complaint in the Foreclosure Action only specified the Second Mortgage. SunTrust did not argue that the court in the Foreclosure action lacked jurisdiction because the First Mortgage was superior to Tuscan Ridge’s lien. Because the issues in this case and in the Quiet Title action are not identical, and the issue of whether the First Mortgage was superior to Tuscan Ridge’s lien was not litigated, collateral estoppel does not preclude relief for SunTrust.

The county court departed from the essential requirements of the law in denying the motion for relief from judgment in this Foreclosure Action because the judgment is void, and collateral estoppel does not preclude relief for SunTrust, thus, the Petition for Writ of Certiorari is granted.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. SunTrust’s motion to lift the stay, filed on July 22, 2016, is **GRANTED**.

2. The “Petition for Writ of Certiorari” is **GRANTED**, the Order denying SunTrust’s motion for relief from final judgment, entered on June 23, 2015, is **QUASHED**, and this matter is remanded to the County Court for further proceedings.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 17th day of August, 2016.

/S/ _____
KEITH A. CARSTEN
Presiding Circuit Judge

SCHREIBER and J. RODRIGUEZ, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **The Honorable Andrew L. Cameron**, 425 N. Orange Avenue, Orlando, Florida 32801; **David S. Hendrix, Esq., and Christian M. Leger, Esq.**, GrayRobinson, P.A., P.O. Box 3324, 401 E. Jackson St., Suite 2700, Tampa, FL 33602; and **Mark P. Stopa, Esq.**, Stopa Law Firm, 447 Third Ave. N., Suite 405, St. Petersburg, FL 33701; on this 17th day of August, 2016.

/S/ _____
Judicial Assistant