

# Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed June 09, 2010.

Not final until disposition of timely filed motion for rehearing.

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No. 3D09-997

Lower Tribunal No. 08-62415

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**Glazy Ruscalleda and Jose Ruscalleda,**  
Appellants,

vs.

**HSBC Bank USA, etc.,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mark King Leban, Judge.

John H. Ruiz and Karen Barnet-Backer, for appellants.

Shapiro & Fishman and Heidi J. Weinzetl (Boca Raton), for appellee.

Before WELLS, ROTHENBERG, and LAGOA, JJ.

ROTHENBERG, J.

Based on the unique circumstances of this case, we conclude that the trial

court abused its discretion by denying the motion to continue the final summary judgment hearing and by failing to grant the motion to transfer the foreclosure action to the division where a separate foreclosure action was pending in which another bank was simultaneously seeking to foreclose the same mortgage. Accordingly, we reverse the final judgment of foreclosure and remand with instructions to reinstate the foreclosure action filed by plaintiff, HSBC Bank USA, and to allow the defendants, Glazy Ruscalleda and Jose Ruscalleda, to answer the complaint and assert affirmative defenses.

Reversed and remanded.