Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed April 17, 2013.

_____

No. 3D12-1881
Lower Tribunal No. 09-16447

_____

Jose and Aracelli Mendoza,
Appellants,

vs.

Chase Home Finance, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ronald Dresnick, Judge.

De Armas, Millich & Rice, PL, and Shaun E. Rice, and Elizabeth DeArmas, for appellants.

Choice Legal Group, P.A. and William David Newman, Jr., and Karene L. Tygenhof (Fort Lauderdale) for appellee.

Before CORTIÑAS and ROTHENBERG, JJ., and SCHWARTZ, Senior Judge.

On Confession of Error

SCHWARTZ, Senior Judge.

The defendants appeal from an order denying their Florida Rule of Civil Procedure 1.540(b) motion to vacate a final judgment of foreclosure and the ensuing sale and certificate of title. The basis of the appeal is that the defendant-mortgagors did not receive notice of the non-jury trial which resulted in the judgment and orders in question. Upon consideration of an appropriate confession of error by the mortgagee, and our own review of the record, we must concur that the rule 1.540(b) motion should have been granted on the ground raised below.[1] Accordingly, the final judgment of foreclosure entered on May 26, 2011, the certificate of sale issued July 11, 2011, and the certificates of disbursement and title issued December 7 and 9, 2011 and November 14, 2012, are vacated and this cause is remanded for further proceedings.

Vacated and remanded.

---

[1] The trial judge based his ruling on the established fact that there was no cognizable defense to the foreclosure action so that the same result would have occurred in any event. While we both agree with this conclusion and are sympathetic with the considerations which drove it, the law is clear that, in the absence of an appropriate notice of trial, none of these factors make any difference. See Goudie v. Garcia, 584 So. 2d 100 (Fla. 3d DCA 1991); Shlishey the Best, Inc. v. Citifinancial Equity Servs., Inc., 14 So. 3d 1271 (Fla. 2d DCA 2009).