

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR COLLIER COUNTY, FLORIDA

21ST MORTGAGE CORPORATION,

CASE NO.: 2015-CA-001170
DIVISION: C

Plaintiff,

vs.

MARY JEAN ZISKA, et al.,

Defendants.

**PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR RELIEF FROM ORDER
ENTERED PURSUANT TO FLORIDA RULE OF CIVIL PROCEDURE 1.540**

Plaintiff, 21ST MORTGAGE CORPORATION, by and through its undersigned counsel and pursuant to Fla. R. Civ. P. 1.540, files this Motion for Reconsideration of the Order sustaining Defendant's, MARY JEAN ZISKA, ("Defendant"), Objection to Foreclosure Sale dated February 24, 2017, and in support thereof, states as follows:

BACKGROUND

1. On or about June 29, 2015, Plaintiff filed its mortgage foreclosure action as a result of Defendant's default under the terms of the note and mortgage held by Plaintiff.
2. Thereafter, on or about March 16, 2016, Defendant, by and through her counsel, filed an Answer and Affirmative Defenses to Plaintiff's Verified Amended Complaint.
3. On May 6, 2016, an Order setting Non-Jury Trial to be heard on August 5, 2016 was entered.
4. The Non-Jury Trial was held on August 5, 2016 and after the testimony of Plaintiff and Defendant's witnesses, as well as the presentation of competent and substantial evidence, the Court entered a Final Judgment in favor of the Plaintiff setting a Foreclosure Sale to be held on September 1, 2016. A copy of the Non-Jury Trial Transcript was filed on or about October 24, 2016. A copy of the Final Judgment is attached hereto as Exhibit "A".
5. The Notice of Sale issued by the Collier County Clerk of Court was entered on August 5, 2016.
6. On September 1, 2016, the subject property was sold to the Plaintiff as the highest bidder.

Matter# 82626

7. On September 12, 2016, Defendant filed her *pro se* Objection to Foreclosure Sale attached hereto as Exhibit "B".¹ A Response in Opposition to Defendant's Objection to Foreclosure Sale was filed on or about September 21, 2016 attached hereto as Exhibit "C".

8. On February 24, 2017, an Order was entered sustaining Defendant's Objection to Foreclosure Sale. A copy of the Order is attached hereto as Exhibit "D".

9. Based on the foregoing, Plaintiff files this Motion for Reconsideration and/or relief from Order entered pursuant to Fla. R. Civ. P. 1.540, and asks this Court to reconsider, vacate the order entered in this matter on February 24, 2017, overrule the Objection to Foreclosure Sale, and order that the Clerk of Court issue the Certificate of Title forthwith.

STANDARD OF REVIEW

10. This Court has "broad discretion to grant rehearing and reconsider its decision in order to correct any errors." *Richmond v. State Title & Guar. Co.*, 553 So. 2d 1241, 1242 (Fla. 3d DCA 1989) (citing *Francisco v. Victoria Marine Shipping, Inc.*, 486 So. 2d 1386, 1389 (Fla. 3d DCA 1986)).

11. Pursuant to Fla. R. Civ. P. 1.540(b), "on motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect." The purpose of Florida Rule of Civil Procedure 1.540 is to allow for the correction of mistakes and provide relief from orders and proceedings "under certain articulated and limited circumstances". *U.S. Bank Nat. Ass'n. v. Paiz*, 68 So. 3d 940 (Fla. 3d DCA 2011).

ARGUMENT

12. Plaintiff files the instant Motion for Reconsideration on the basis that the Court erred in sustaining Defendant's Objection to Foreclosure Sale. The objection to sale is a sham because it contains no arguments that the sale was invalid and the Defendant is limited to objecting to the conduct of the sale itself. See *CCC Props., Inc. v. Kane*, 582 So. 2d 159, 161 (Fla. 4th DCA 1991) ("[T]he statute's provision for filing objections refers to the objection to the conduct of the sale as provided by the judgment and/or statute."). The Defendant's Objection to Sale does not contain a single proper or valid sale objection. Only timely filed valid objections to sale halt issuance of certificates of title. The Defendant did not file such an objection to sale.

¹ Defendant, Mary Jean Ziska, has filed multiple improper objections to sale and post-judgment motions and discovery, which are not authorized.

13. It has been explained that, “[i]n order to vacate a foreclosure sale, the trial court must find: (1) that the foreclosure sale bid was grossly or startlingly inadequate; and (2) that the inadequacy of the bid resulted from some mistake, fraud or other irregularity in the sale.” *Mody v. Cal. Fed. Bank*, 747 So.2d 1016, 1017–18 (Fla. 3d DCA 1999) (citing *Arlt v. Buchanan*, 190 So.2d 575, 577 (Fla.1966)).

14. At a minimum, then, an objection to a foreclosure sale must allege these facts. *See Indian River Farms v. YBF Partners*, 777 So.2d 1096, 1098 (Fla. 4th DCA 2001) (affirming the trial court's summary denial of the appellant's objections to a foreclosure sale because “the objections did not raise any defect or irregularity with regard to the foreclosure sale itself nor with the inadequacy of price or any allegation that there was a mistake, accident, surprise, misconduct, fraud or irregularity in the sale itself”).

15. The Defendant has failed to allege any of those facts, including that the foreclosure sale was grossly or startlingly inadequate or that the inadequacy of the bid resulted from some mistake, fraud, or other irregularity in the sale. As such, Defendant has not plead any legitimate basis for an Objection to Foreclosure Sale.

16. The Defendant's claims relate solely to the final judgment of foreclosure, not the foreclosure sale. Allowing the Defendant's filing to be considered an objection to sale improperly puts the filing's title over its substance. *See Indus. Affiliates, Ltd. v. Testa*, 77 So. 2d 202, 204 (Fla. 3d DCA 2000) (“[I]f [a] motion is mislabeled, the Court will look to the substance of the motion, not the label.”); *Fire & Cas. Inc.Co. of Conn. v. Sealey*, 810 So. 2d 988, 992 (Fla. 1st DCA 2002) (“We agree that the true nature of a motion must be determined by its content and not by the label the moving party has used to describe it.”). The objection should not serve as a basis for denying issuance of the certificate of title simply because they are titled “objections to sale”.

17. Defendant's objection to Sale is legally insufficient because it does not contain any arguments that the sale was invalid. It has been found that record support for a sale objection is essential. In *YEMC Constr. & Dev., Inc. v. Inter Ser. U.S.A., Inc.*, 884 So. 2d 446 (Fla. 3d DCA 2004), a mortgagee earned a summary final foreclosure judgment and the property was sold at auction. *Id.* at 448. Nine days later, tenants filed a motion objection to the foreclosure sale and moving to vacate the judgment. *Id.* The trial court “entered an order finding that it had the power to extend the time to redeem because the tenants had filed a facially valid objection before

the issuance of the certificate of title.” *Id.* The Court held that, even though setting aside a foreclosure sale can revive expired redemption rights, the trial was “without authority” to do so because “the record provided no grounds for vacating the sale.” *Id.* at 449.

18. Furthermore, refusing to allow the clerk to file the certificate of title based on a sham objection operated as an unreasonable delay in validating the foreclosure sale. The unreasonable delay amounts to a violation of Plaintiff’s due process right.

19. Plaintiff has a private and constitutionally protected interest in its property. See *Shlishey the Best, Inc. v. CitiFinancial Equity Serv., Inc.*, 14 So. 3d 1271, 1275 (Fla. 2d DCA 2009) (finding that a winning foreclosure sale bidder had a protectable property right).

20. After a non-jury trial, in which competent and substantial evidence and testimony was presented by Plaintiff and unrefuted by Defendant by and through her counsel, this Court awarded the Plaintiff a judgment of foreclosure. A foreclosure sale was properly noticed and conducted without any defect or irregularity. As such, Plaintiff is entitled to its private property interest.

21. The Plaintiff continues to be denied the benefit of the property. The Plaintiff must continue to pay applicable taxes, insurance and incur other related expenses, while the Defendant, ZISKA, continues to ignore her obligations and enjoy free accommodations. Accordingly, the Plaintiff seeks to complete the foreclosure process pursuant to this Court’s August 5, 2016 final judgment of foreclosure.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant its Motion for Reconsideration and/or Relief from Order entered pursuant to Florida Rule of Civil Procedure 1.540 entered in this matter on February 24, 2017, overrule the Objection to Foreclosure Sale, and order that the Clerk of Court issue the Certificate of Title forthwith, and for any other relief this Court deems just and proper.

Date: March 9, 2017

/s/ Nicole P. Planell

Nicole P. Planell (FL Bar No. 072325)
Quintairos, Prieto, Wood & Boyer, P.A.
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E-mail: nicole.planell@qpwbllaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing has been served by U.S. Mail and/or e-mail on this 9th day of March, 2017 on the following:

Mary Jean Ziska
c/o Marion Gregory, Guardian
9202 Vanderbilt Dr.
Naples, FL 34108

Mary Jean Ziska
5632 Whisper Wood Boulevard, Apartment 1601
Naples, FL 34110

Hamilton Mikes, P.A.
711 5th Avenue South, Suite 212
Naples, FL 34102
jason@hamiltonmikes.com
Attorney for Cypress Cove at Pelican Strand Condominium Association, Inc.

The Strand Master Property Owners Association, Inc.
c/o Cambride Property Management
2335 Tamiami Trail North, Ste. 402
Naples, FL 34103

The Club at the Strand, L.C.
c/o Salvatori, Wood & Buckel, P.L.
9132 Strada Place, Fourth Floor
Naples, FL 34108

/s/ Nicole P. Planell

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FILED IN OPEN COURT

AUG - 5 2016

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR COLLIER COUNTY, FLORIDA

21ST MORTGAGE CORPORATION,

Plaintiff,

vs.

CASE NO.: 2015-CA-001170

MARY JEAN ZISKA; CYPRESS COVE AT
PELICAN STRAND CONDOMINIUM
ASSOCIATION, INC.; THE STRAND MASTER
PROPERTY OWNERS ASSOCIATION, INC.; THE
CLUB AT THE STRAND, L.C.,

DIVISION: C

Defendants.

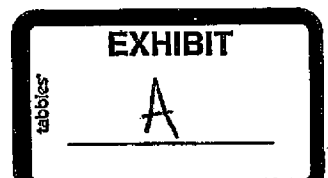
FINAL JUDGMENT OF FORECLOSURE

THIS ACTION was heard before the Court on August 5, 2016. On the evidence presented, IT IS ORDERED AND ADJUDGED that:

1. The Summary Judgment is **GRANTED** in favor of the Plaintiff. Service of process has been duly and regularly obtained over Defendants: Mary Jean Ziska, Cypress Cove At Pelican Strand Condominium Association, Inc., The Strand Master Property Owners Association, Inc., and The Club at the Strand, L.C.
2. **Amounts Due.** There is due and owing the Plaintiff the following:

| | |
|---|--------------|
| Principal due on the note secured by the mortgage foreclosed: | \$325,706.55 |
| Interest on the note and mortgage from August 1, 2010 to August 5, 2016 | \$208,069.43 |
| Escrow Advances | \$14,564.61 |
| Late Charges | \$4,855.01 |
| Unapplied Credit | (\$2,133.81) |

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SUBTOTAL **\$551,061.79**

Additional Costs:

| | |
|-----------------------------|------------|
| Foreclosure Search and Exam | \$400.00 |
| Filing Fee | \$1,983.00 |
| Service of Process | \$645.40 |
| Delivery Services | \$6.36 |
| Copy of Transcript | \$218.20 |

SUBTOTAL **\$554,314.75**

| | |
|--|------------|
| Foreclosure Flat Fee | \$1,125.00 |
| Attorney fees based upon 46.8 hours at \$185.00 per hour | \$8,658.00 |

GRAND TOTAL **\$564,097.75**

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. **Mortgage Reformation.** This Court finds that the mortgage recorded on November 21, 2006 in OR Book 4142, Page 2351, Public Records of Collier County, FL has an incorrect legal description and shall be reformed to reflect the correct legal description as follows:

UNIT 1601, BUILDING 16, PHASE 16, CYPRESS COVE AT PELICAN STRAND, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF AS RECORDED IN OFFICIAL RECORDS BOOK 2394, PAGE 2599, AND ANY SUBSEQUENT AMENDMENTS THERETO, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

5. **Lien on Property.** Plaintiff, whose holds a lien for the grand 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 and/or 720.3085. The Plaintiff's lien is determined to be a first mortgage lien. The plaintiff's lien encumbers the subject property located in Collier County, Florida and described as:

UNIT 1601, BUILDING 16, PHASE 16, CYPRESS COVE AT PELICAN STRAND, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF AS RECORDED IN OFFICIAL RECORDS BOOK 2394, PAGE 2599, AND ANY SUBSEQUENT AMENDMENTS THERETO, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.

Property Address: 5632 Whisper Wood Boulevard, Apartment 1601, Naples, FL 34110

Matter # 82626

6. **Sale of Property.** If the total sum with interest at the rate prescribed by law and all costs of this action accruing subsequent to this judgment are not paid, the Clerk of this Court shall sell the property at public sale to the highest bidder for cash, except as set forth hereinafter, on September 1, 2016, at 11:00 a.m. Eastern Standard Time (EST) in the Lobby of the Third Floor of the Courthouse Annex, Collier County Courthouse, 3315 Tamiami Trail East, Naples, FL 34112, in accordance with Chapter 45, Florida Statutes.
7. **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 charged imposed in Section 45.031, Florida Statutes, for services in making, recording, and certifying the sale and title that shall be assessed as costs.
8. **Assignment of Bid.** Plaintiff without further order of the Court shall be permitted to file an Assignment of Bid prior to the sale in the instant action.
9. **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.
10. **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.
11. **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.
12. **Attorney Fees.** The Court finds, based upon the affidavits presented and upon inquiry of counsel for the plaintiff, that 46.8 hours at an hourly rate of \$185.00 were reasonably expended by plaintiff's counsel and that a flat fee of \$1,125.00 and the hourly rate of \$185.00 are 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).
13. **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 PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER 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, 3315 TAMiami TRIAL EAST, NAPLES, FL 34112, (TELEPHONE: (239) 252-2745), WITHIN TEN (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, PREFERABLY 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 LEGAL AID SERVICE OF COLLIER COUNTY, 2681 AIRPORT ROAD SOUTH, SUITE C-105, NAPLES, FL 34112 (TELEPHONE: (239) 775-4555), 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 LEGAL AID SERVICE OF COLLIER COUNTY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

14. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, writs of possession, deficiency judgments, supplemental complaints and re-foreclosures.

DONE AND ORDERED in Chambers in Naples, Collier County, Florida, on this 05 day of August 2016.


Circuit Judge

Copies furnished to all parties:

Matter # 82626

8-8-14

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✓ The Strand Master Property Owners Association, Inc.
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✓ The Club at the Strand, L.C.
c/o Salvatori, Wood & Buckel, P.L.
9132 Strada Place, Fourth Floor
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IN THE CIRCUIT COURT OF THE
21ST JUDICIAL CIRCUIT IN AND FOR
COLLIER COUNTY, FLORIDA

21ST MORTGAGE CORPORATION

UNIFORM CASE NO. 112015 CA 11700000XX

PLAINTIFF

CLERKS CASE NUMBER: 1501170CA

VS.

MARY JEAN ZISKA

DEFENDANT

DEFENDANT MARY JEAN ZISKA OBJECTION TO FORECLOSURE SALE

Defendant Mary Jean Ziska pursuant to 45.301, Florida Statutes, hereby files this Objection to Foreclosure Sale, and as grounds therefore state as follows:

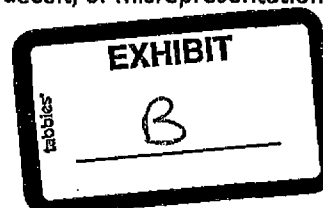
1. Defendant Mary Jean Ziska is the owner of the real property located at 5632 Whisperwood Blvd. unit #1601 Naples Florida 34110, as described as:

Unit 1601, Building 16, Phase 16, CYPRESS COVE AT PELICAN STRAND, a condominium, according to the declaration there of as recorded in Official Records Book 2394, Page 2599, of the Public Records of Collier County, Florida, as amended.

2. A foreclosure sale was held on September 1st 2016, at 11:00am for the above described property. It was sold at the foreclosure auction for amount \$161,000.00 to 21st Mortgage Corporation (plaintiff).

3. Mary Jean Ziska, Defendant, objects to the sale. Marion Gregory as limited guardian has proved to be a negligent limited guardian. Her actions have harmed her ward's finances, credit and now her home ownership.

4. Linda Yerger, as defendant's lawyer has violated the rules of the Rules regulating the Florida Bar. On count I, the referee recommended that Linda Yerger, be found guilty of violating the following Rules Regulating the Florida Bar: rule 4-1.1 (a lawyer shall provide competent representation to his client); rule 4-1.3 (an attorney shall act with reasonable diligence in the representation of his client); rule 4-1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); rule 4-5.5 (a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction); rule 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct); rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and



rule 4-8.4(d) (a lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice).

a.) As of the date of this document (9/12/2016) Mary Jean Ziska has never met Linda Yerger . The only contact (via phone) between parties, occurred during the bankruptcy initiated by Linda Yerger was a few phone calls from Mary Jean Ziska to her office and posts on her website requesting that she stop her actions. One email was received from Linda Yerger to Mary Jean Ziska consisting of an apology after the traumatic bankruptcy. Not one word of the foreclosure, or of her defense methods/ strategies or even any questions or reference to any part of the case ever to Mary Jean Ziska (defendant)

4. This case highlights the problems with limited guardianship and legal counsel hired by limited guardianship without any relationship allowed between counsel and ward. The Lack of communication, transparency in actions & documentation, along with the lack of accountability in actions that are not in the best interest of the ward have harmed Mary Jean Ziska's welfare. Marion Gregory's history of actions in connection to Linda Yerger's participation in the matter of the bankruptcy and the matter of the foreclosure have been devastating to the ward (Mary Jean Ziska).

a.) As Per the Fl. Statutes 744 concerning limited guardianship and legal representation:

744.1012 Legislative intent.--The Legislature finds that adjudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary. The Legislature further finds that it is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs. Recognizing that every individual has unique needs and differing abilities, the Legislature declares that it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf. This act shall be liberally construed to accomplish this purpose.

a) Marion Gregory is a limited guardian of Mary Jean Ziska who is not incapacitated. The limited guardianship involves only two areas : defense of lawsuits and contract. Mary Jean Ziska had/has the right to be involved and notified of lawsuits and of court dates and of defense of such lawsuits and of any contracts that are being negotiated . Mary Jean Ziska was not notified of any lawsuit for the foreclosure of her property (5632 Whisperwood Blvd. Unit 1601 Naples Florida 34110.) Mary Jean Ziska received only notification of the sale of her property in the mail 3-4 days before a long labor day weekend where the auction of her property was set for September 1st 2016. Marion Gregory as limited guardian had numerous opportunities to relay the foreclosure and update of progress of defense:

a. Mary Jean Ziska could have been notified while at her father's home at Thanksgiving November 2016.

b. Mary Jean Ziska could have been notified when both she and Marion Gregory both visited with (Maura Ziska and family at 1500 North Ocean Blvd. Palm Beach Florida 34108) over the Christmas holiday December 2016.

c. Mary Jean Ziska could have been notified when both she and Marion Gregory visited with Maura Ziska and her family at 1500 North Ocean Blvd. Palm Beach Florida 34108 for Caroline Christu's 1st confirmation May 1st 2016.

d. Mary Jean Ziska could have been notified when taken out to lunch on her 50th birthday July 7th 2016 by Marion Gregory.

It is a violation of Mary Jean Ziska's rights to not be notified of any lawsuits. It is a violation of Mary Jean Ziska's rights to not be kept informed of the progress of the defense. It is a violation of Mary Jean Ziska's rights to not be allowed to have an opinion, speak with, or meet the lawyer involved in the defense of the foreclosure or even the bankruptcy (2014).

744.102 Definitions.—As used in this chapter, the term:

(1) Attorney: means an attorney who represents the ward. Such attorney shall represent the expressed wishes of the ward to the extent it is consistent with the rules regulating The Florida Bar.

(a) "Limited guardian" means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

Mary Jean Ziska has a right to 744.3715 Petition for interim judicial review. Based on the negligence by Marion Gregory and Linda Yerger concerning the foreclosure and subsequent sale of the condominium (5632 Whisperwood Blvd. Unit 1601 Naples Florida 34110).

(1) At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and the guardian is not acting in the best interest of the ward. The petition for review must state the nature of the objection to the guardian's action or proposed action. Upon the filing of any such petition, the court shall review the petition and act upon it expeditiously.

5. History of negligent behavior by Marion Gregory: In 2014, Marion Gregory, Linda Yerger and Antoinella Scarpa filed for Chapter 13 bankruptcy using information of Mary Jean Ziska without her consent. In 2015, Marion Gregory opened a 5th 3rd bank account, changed the payee to herself and the new bank account and obtained \$1222.66 as a direct deposit stealing funds from Mary Jean Ziska, for Jan Feb. and March of 2015. This bank account was also opened without the consent or knowledge of Mary Jean Ziska. Marion Gregory, Linda Yerger were both involved in the foreclosure and subsequent sale of 5632 Whisperwood Blvd. Unit 1601 Naples Florida 34110. These subsequent actions have ruined credit, funds, and home ownership which were not in the best interest of Mary Jean Ziska. The continued inexcusable and harmful actions of the limited guardian(Marion Gregory) and lawyer(Linda

Yerger) and the devastating results that have harmed area of finances, credit and home ownership put into question the competency of the limited guardian and the actions taken for the defense of the foreclosure and subsequent sale of 5632 whisperwood blvd. Unit 1601 Naples fl. 34110.

Wherefore, defendant Mary Jean Ziska respectfully requests that this Honorable Court sustain this objection to foreclosure sale, vacates the auction and subsequent sale of the property (5632 Whisperwood Blvd. unit 1601 Naples Florida 34110)

The law recognizes that there will be situations where final judgments have been entered that would be wrong and unjust to leave as final judgements and recognizes that irregularities in the foreclosure process that make the sale void/ mistakes / fraud/ new evidence that bring to light this situation. Therefore with no other legal remedy to this situation, the title should remain in defendant's name (Mary Jean Ziska). The limited guardianship should be removed and proper representation with the best interest of Mary Jean Ziska should be enlisted allowing the repair of her credit , the return of her finances, and the restoration of her home ownership including proper investigation of the mortgage situation including fraud by David J Stern and his fraudulent practices within the mortgage industry.

Respectfully Submitted,

Mary Jean Ziska

5632 Whisperwood Blvd. Unit 1601

Naples Florida 34110

A handwritten signature in cursive script that reads "Mary Jean Ziska". The signature is written in black ink and is positioned below the typed name and address.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR COLLIER COUNTY, FLORIDA

21ST MORTGAGE CORPORATION,

CASE NO.: 2015-CA-001170
DIVISION: C

Plaintiff,

vs.

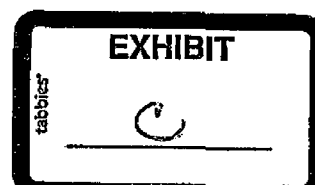
MARY JEAN ZISKA, et al.,

Defendants.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S, MARY JEAN ZISKA,
OBJECTION FORECLOSURE SALE**

COMES NOW the Plaintiff, 21ST MORTGAGE CORPORATION, ("Plaintiff") and hereby files this its Response In Opposition to Defendant's, MARY JEAN ZISKA, ("Defendant"), Objection to Foreclosure Sale dated September 12, 2016 as follows:

1. On or about June 29, 2015, Plaintiff filed its mortgage foreclosure action as a result of Defendant's, MARY JEAN ZISKA, failure to comply with certain loan obligations.
2. Thereafter, Defendant, by and through her counsel, filed an Answer and Affirmative Defenses to Plaintiff's Verified Amended Complaint on or about March 16, 2016.
3. On May 6, 2016, an Order setting Non-Jury Trial to be heard on August 5, 2016 was entered.
4. The Non-Jury Trial was held on August 5, 2016 and after the testimony of Plaintiff and Defendant's witnesses, as well as the presentation of competent and substantial evidence, the Court entered a Final Judgment in favor of the Plaintiff setting a Foreclosure Sale to be held on September 1, 2016. The Notice of Sale issued by the Collier County Clerk of Court was entered on August 5, 2016.
5. On September 1, 2016, the subject property was sold to the Plaintiff as the highest bidder.
6. On September 12, 2016, Defendant filed her *pro se* Objection to Foreclosure Sale.
7. Florida case law is clear that the substance of an objection to a foreclosure sale under section 45.031(5) must be directed toward conduct that occurred at, or which related to,



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the foreclosure sale itself. *See Indymac v. Federal Bank, FSB v. Hagan*, 104 So. 3d 1232 (3d DCA 2012). As multiple Courts have noted, the purpose of allowing an objection to a foreclosure sale “is to afford a mechanism to assure all parties and bidders to the sale that there is no irregularity at the auction or any collusive bidding, etc.” *Emanuel v. Bankers Trust Co., N.A.*, 655 So.2d 247, 250 (Fla. 3d DCA 1995) (emphasis added); *see also CCC Props., Inc. v. Kane*, 582 So.2d 159, 161 (Fla. 4th DCA 1991) (noting that “the statute’s provision for filing objections refers to the objections to the conduct of the sale as provided by the judgment and/or the statute”) (emphasis added).

8. Thus, it is well settled that “[i]n order to vacate a foreclosure sale, the trial court must find: (1) that the foreclosure sale bid was grossly or startlingly inadequate; and (2) that the inadequacy of the bid resulted from some mistake, fraud or other irregularity in the sale.” *Mody v. Cal. Fed. Bank*, 747 So.2d 1016, 1017–18 (Fla. 3d DCA 1999) (citing *Arlt v. Buchanan*, 190 So.2d 575, 577 (Fla.1966)). At a minimum, then, an objection to a foreclosure sale must allege these facts. *See Indian River Farms v. YBF Partners*, 777 So.2d 1096, 1098 (Fla. 4th DCA 2001) (affirming the trial court’s summary denial of the appellant’s objections to a foreclosure sale because “the objections did not raise any defect or irregularity with regard to the foreclosure sale itself nor with the inadequacy of price or any allegation that there was a mistake, accident, surprise, misconduct, fraud or irregularity in the sale itself”).

9. Here, the Defendant has failed to allege any of those facts, including that the foreclosure sale was grossly or startlingly inadequate or that the inadequacy of the bid resulted from some mistake, fraud, or other irregularity in the sale. As such, Defendant has not plead any legitimate basis for an Objection to Foreclosure Sale.

WHEREFORE, Plaintiff respectfully requests this Court overrule Defendant’s Objection to Foreclosure Sale, order the Clerk of Court to issue the Certificate of Title forthwith, and for any other relief this Court deems just and proper.

Dated this 21st day of September, 2016

/s/ Nicole P. Planell

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing has been served by U.S. Mail and/ or e-mail on this 21st day of September, 2016 on the following:

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT,
IN AND FOR COLLIER COUNTY, FLORIDA

21ST MORTGAGE CORPORATION,

CASE NO.: 2015-CA-001170

DIVISION: C

Plaintiff,

vs.

MARY JEAN ZISKA, et al.,

Defendants.

ORDER ON DEFENDANT'S OBJECTION TO FORECLOSURE SALE

THIS CAUSE came before the Court on February 17, 2017 on Defendant Mary Jean Ziska's
Objection to Foreclosure Sale and the Court being otherwise advised in the premises, it is hereby

ORDERED AND ADJUDGED:

1. Defendant Mary Jean Ziska's Objection to Foreclosure Sale is SUSTAINED.

2. _____

DONE AND ORDERED this 24 day of February 2017, at Naples, Collier County,
Florida.

Luigi D. Payne
Circuit Judge

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