IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D2022-2647
L.T. NO. CACE19-002572

RONALD DESBRUNES,
Appellant,

v.

US BANK NATIONAL ASSOCIATION,
etc.
Appellee.

AMICUS CURIAE BRIEF IN SUPPORT OF US BANK NATIONAL ASSOCIATION'S MOTION FOR RHEARING

On behalf of: **Members of the USFN, American Legal & Financial Network, and the Legal League Members (identified individually by entity or law firm in Appendix 1)**

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PRELIMINARY STATEMENT

In this amicus curiae brief the following designations will be used: The USFN, ALFN, and the Legal League shall be referred to collectively as the "Amici." Appellant, Ronald Desbrunes, will be referred to as "Ronald" or "Appellant." Appellee, U.S. Bank National Association as Trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates Series 2006-AM1, will be referred to as "US Bank." The deceased mortgagor, Francois Desbrunes, will be referred to as "Desbrunes." References to the Record on Appeal will be made by the letter "R," followed by the relevant page number (1-2154) within the record.

This brief will explain why this Court's decision in *Desbrunes v. US Bank Nat'l Ass'n, as Tr. for Structured Asset Sec. Corp. Mortgage Pass-Through Certificates, Series 2006-AM1*, 2024 WL 591432, at *1 (Fla. 4th DCA Feb. 14, 2024) represents a detrimental break in Florida jurisprudence that has governed foreclosure proceedings for decades. Amici will also highlight the broad and profound implications of this Court's interpretation of rule 1.260(a) and its application within *in rem* foreclosure proceedings. *See Ciba-Geigy*

Ltd. v. Fish Peddler Inc., 683 So. 2d 522 (Fla. 4th DCA 1999) (briefs from *amici curiae* are to assist the court in cases which are of general public interest, or in aiding in the presentation of difficult issues). If not revised, this Court's decision will significantly impact the mortgage industry, and cause severe consequences this Court may not have anticipated or intended.

IDENTITY AND INTEREST OF AMICI CURIAE

USFN — America's Mortgage Banking Attorneys® ("USFN") is a national, not-for-profit association of law firms that practice primarily in matters of real estate finance. Founded in 1988, USFN consists of organizations that represent the nation's largest banks, mortgage lenders, mortgage servicing companies, and government sponsored enterprises in connection with foreclosure, bankruptcy, loan modifications and other workouts, inventoried properties, and litigation related to these areas. Membership also includes industry-affiliated suppliers of products and services.

USFN was established to promote competent, professional, and ethical representation among its membership and for the mortgage servicing industry, and to represent the collective interests of its

membership in the mortgage servicing industry. As part of its mission, USFN also supports the interests of its members and the mortgage servicing industry through education, political and governmental advocacy, and by encouraging the use of industry standard procedures, technologies, and best practices.

The ALFN is a national network of legal and residential mortgage banking professionals that provides training and educational resources for the residential mortgage banking community. Founded in 2001, ALFN's members are attorneys, residential mortgage bankers and investors, title companies, technology companies, and various other entities engaged in consulting, investment research, risk evaluation, asset protection and technology related to the mortgage industry. ALFN provides a forum for mortgage industry professionals to address issues specific to their industry and their business, including actively litigated appellate issues.

Lastly, Legal League is a professional association of financial services law firms in the United States. The Legal League has been involved in creating impactful changes in the mortgage servicing industry for the benefit of its members, servicers, and consumers.

The Amici have an interest in the matter because Florida mortgage foreclosure practice is a core business of many of their members and members' clients. The members of the Amici contain thirty-two Florida law firms who practice this area of law. **App. 1.** Of particular concern is this Court's broad holding that, "[b]ecause the court entered judgment without the presence of the deceased mortgagor's legal representative, the final summary judgment of foreclosure is a nullity." *See Desbrunes*, 2024 WL 591432, at *1. This Court then states that the proper legal representative is the authorized representative of the decedent's estate, as appointed by the probate court, rather than the appointment of a guardian ad litem. *Id.*

This ruling severely disrupts established norms and procedures in the prosecution of foreclosure cases. Florida law has never required a foreclosing party to open a probate to complete an *in rem* foreclosure, this case. The decision will thwart the proper resolution of mortgage-related disputes, as it would require plaintiffs to file additional and unnecessary probate cases within the Florida Court system to complete a foreclosure.

SUMMARY OF THE ARGUMENT

Under long-standing probate and foreclosure law, rule 1.260(a) does not apply to *in rem* mortgage foreclosure actions where the deceased dies, whether testate or intestate, leaving homestead property. For that reason, upon notice of Desbrunes' death, US Bank timely and properly amended its complaint to drop Desbrunes and to add the necessary and indispensable parties to its *in rem* mortgage foreclosure action. The identified heirs, although owners and indispensable parties, like Desbrunes prior to his death, did not have the same interest in the subject property as Desbrunes, who signed the note and mortgage. For this reason, US Bank was required to amend its pleadings rather than substitute parties so it could properly allege the new and unique interests of Desbrunes' heirs and provide them with notice of the claims against them.

Secondly, the plain language of rule 1.260 does not provide for abatement in an *in rem* foreclosure proceedings upon the filing of a suggestion of death, it provides for the dismissal of the deceased party if he or she is not timely substituted out of the case. Desbrunes was dropped from the proceedings via the amended complaint within 90 days of the suggestion of death. Rule 1.260(a) required nothing

more and any alleged violation of rule 1.260(a) could not form the basis for deeming the regularly entered foreclosure judgment a nullity.

Lastly, if this Court does not revise/reverse *Desbrunes* it will have widespread and profound consequences in the mortgage industry, Court system and potentially the housing market. As it has never been a common practice to open a probate for an *in rem* foreclosure proceeding, the decision will be binding on the Courts in Florida and render multiple judgments a "nullity," i.e. defective and void, and disrupt marketable title for the citizens of Florida.

ARGUMENT

I. THE FORECLOSURE PROCEEDING AND JUDGMENT ARE NOT "NULLITIES" FOR FAILURE TO JOIN THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE, AS RULE 1.260(a) IS INAPPLICABLE TO *IN REM* FORECLOSURES.

In *Desbrunes* this Court states that "[b]ecause the court entered judgment without the presence of the deceased mortgagor's legal representative, the final summary judgment of foreclosure is a nullity." *Desbrunes*, 2024 WL 591432, at *1. This Court then states that the proper legal representative is the authorized representative of the decedent's estate, as appointed by the probate court. *Id.* Read

together, *Desbrunes* holds that the personal representative of the decedent's estate is an indispensable party, the absence of whom renders any judgment void.

However, in a strictly *in rem* foreclosure proceeding, Florida jurisprudence has never before required the substitution of a party defendant under Rule 1.260(a) or the administration of a probate.[1] Rather, the law permits the plaintiff to drop the decedent and amend to include the new property owners, and parties who many have an interest in the property.

"A judgment of foreclosure is a judgment in rem or quasi in rem that directs the sale of the mortgaged property to satisfy the mortgagee's lien. As such, it 'applies only to the property secured by the mortgage and does not impose any personal liability on the mortgagor.'" *Aluia v. Dyck-O'Neal, Inc.*, 205 So. 3d 768, 773-74 (Fla. 2d DCA 2016) (citing *Royal Palm Corp. Ctr. Ass'n, Ltd. v. PNC Bank, NA*, 89 So.3d 923, 929-30 (Fla. 4th DCA 2012)(internal citation

[1] Notably, US Bank never sought relief under Rule 1.260(a), but rather it effectively dropped the decedent by filing an amended complaint. (R1988-2022). There is also no order of substitution in the Record. *See* Fla. R. Civ. P. 1.260(a) ("[T]he court may *order* substitution ….") (emphasis supplied).

omitted). Foreclosure does not seek the payment of monies held by a person or estate. *See id.; compare with Thompson v. Hodson*, 825 So. 2d 941, 952 (Fla. 1st DCA 2002) ("A claim against the estate … is payable from funds held by the estate."); *Scott v. Morris*, 989 So. 2d 36, 37 (Fla. 4th DCA 2008) ("The purpose of rule 1.260 is to facilitate the rights of persons having lawful claims against estates being preserved ...."') (internal citation omitted); Fla. Stat. § 733.710 (specifically exempting foreclosure actions from the time limitations applicable to probate claims).

Reflecting on its *in rem* nature, the indispensable party that must be joined in every foreclosure action is the record title owner of the mortgaged property. *See Citibank, N.A. v. Villanueva*, 174 So. 3d 612, 613 (Fla. 4th DCA 2015) ("The fee simple title holder is an indispensable party in an action to foreclose a mortgage on property.") (citations omitted). Junior lienholders are included to obtain marketable title, but they are not indispensable to the action because a judgment can be rendered without them. *See Quinn Plumbing Co. v. New Miami Shores Corporation*, 100 Fla. 413, 129 So. 690 (Fla. 1930) (citations omitted) (recognizing as "well established" the right to re-foreclose a mortgage "against all parties holding junior

encumbrances who were omitted as parties to the foreclosure proceedings under which the purchaser bought.") (citations omitted).

Accordingly, the pertinent question before this Court, which was not addressed in *Desbrunes* opinion, is whether the personal representative obtains, upon the decedent's death, a property interest sufficient to qualify it as an indispensable party. *See Desbrunes*, 2024 WL 591432, at *1 ("Because the court entered judgment without the presence of the deceased mortgagor's legal representative, the final summary judgment of foreclosure is a nullity."). The answer is no.

Where the property is homestead, as it is here,[2] the property passes entirely outside of the decedent's estate. *See Buettner v. Fass*, 21 So. 3d 114, 115 (Fla. 4th DCA 2009) ("As the court had already determined that the property was homestead, and thus not part of the decedent's estate, the personal representative had no possessory interest in it.") (citation omitted); *see also* Art. X, § 4(a) & (b), Fla.

[2] Desbrunes represented that the subject property was his homestead in his affirmative defenses and in his motion to continue the trial. (R326, ¶166(b)(i), R419, ¶¶2, 8).

Const. (protecting homestead, and stating that the homestead exemptions inure to the owner's surviving spouse or heirs).

Florida Statute Title XLII "Estates and Trusts" governs the transfer of property upon death and is applicable to the case at bar involving an intestate borrower who owned homestead property which was the subject of a pending foreclosure action at the time his or her death.

If there is a surviving spouse, title to homestead property vests according to Fla. Stat. § 732.401. If there are lineal descendants of the decedent, the spouse has a choice to either take a life estate in the homestead property or elect to take an undivided one-half interest as a tenant in common with the lineal descendants. *See Id.* If there are no lineal descendants, the surviving spouse takes title to the entire estate per Fla. Stat. § 732.102. If there is no spouse, then the heirs are determined by the tiers set up under Fla. Stat. § 732.103. Notably, personal representatives are not members of the protected homestead class, as defined in § 732.103, and have no statutory authority to convey property once it is determined to be

homestead. Under § 733.608, Fla. Stat., protected homestead is not an asset in the hands of a personal representative.[3]

In this case, a personal representative could never acquire any interest in Desbrunes' homestead property because that property, by virtue of its homestead character, never became an asset of the estate. Hence, the personal representative is not an indispensable party, and a probate is not required. The foreclosure proceeding and judgment are not void for failure to name the personal representative.

Even if the property was not the mortgagor's homestead, title still vested in the heirs at death and the personal representative never obtained a property interest that would render it an indispensable party. "The term 'right to property' means title." *Ray v. Rotella,* 425 So. 2d 94, 96 n.3 (Fla. 5th DCA 1982) (citation omitted). Importantly, the "estate of a decedent is not an entity that receives the title and passes it on to the heirs or devisees if not conveyed to others for other purposes during administration." *Id.*

[3] This rationale also applies to property held by joint tenants with the right of survivorship. *See Olstyn v. Olympic*, 455 So. 2d 1137, 1138 (Fla. 2d DCA 1984).

Instead, "title to real property owned by an intestate decedent descends at death directly to the heirs …." *In re Estate of Slater,* 437 So. 2d 1110, 1112 (Fla. 5th DCA 1983); *see* Fla. Stat. § 732.101(2) ("death is the event that vests the heirs' right to the decedent's intestate property."). It is the same if the decedent dies testate. *See* § 732.514, Fla. Stat. ("The death of the testator is the event that vests the right to devises"). *Rice v. Greene*, 941 So. 2d 1230, 1231 (Fla. 5th DCA 2006) (even where decedent's will was unprobated, "it was Mr. Schwartz's death that vested Mrs. Schwartz's rights in the property."); *Sorrels v. McNally*, 89 Fla. 457, 472 (1925) ("Under the common law title to property could not be suspended, but must be vested in someone. Such vestiture or right of vestiture may be cut off or defeated, but we are aware of no authority for holding it as suspended …."). While the heirs' title may in the future be affected by the administration of the estate, if there is ever an administration, title still vests in the heirs at death. *See id.*; *Jones v. Fed. Farm Mortg. Corp.*, 182 So. 226, 228 (Fla. 1938) (At death, "the heirs at law of the decedent have a definite interest in the title to such real estate unless, and until, it becomes necessary for the personal representative to sell and dispose of such real estate to pay the debts of the decedent.").

Thus, the personal representative never obtains title to the property and is not an indispensable party. *See Villanueva*, 174 So. 3d at 613 ("The fee simple title holder is an indispensable party in an action to foreclose a mortgage on property.") (citations omitted).

Amici note there are other minority states that require the administration of a probate in an *in rem* foreclosure proceeding. For example, prior to 1971, Wisconsin's probate laws (like Florida's current laws) deemed title vested in a decedent's heirs automatically upon death. *In re Higgins*, 2023 WL 8823920, at *5 (Bankr. E.D. Wisc. 2023). However, the Wisconsin legislature substantively changed the law in 1971 so that all property interests vested instead in "a personal representative of a decedent's estate." *Id.* (citation omitted). The bankruptcy Court in *Higgins* noted Wisconsin's perspective is the minority view:

> In this way, ***Wisconsin law deviates from the majority***. In most states, when a person dies, title to the decedent's real property immediately vests in the heirs, regardless of whether the probate estate has been or is being administered. *See* Eric C. Surette, 23 Am. Jur. 2d Descent and Distribution §§ 13, 17 (October 2023 update) (*citing Rice v. Seals*, 377 S.W.3d 416 (Ark. 2010); *Bender v. Bender*, 975 A.2d 636 (Conn. 2009); *Freedom Fin. Bank v. Estate of Boesen*, 805 N.W.2d 802 (Iowa 2011); *Heavey v. Maloof*, 901 N.E.2d 665 (Mass. 2009); *Estate of Mace v. Gardner*, 66 So. 3d 1265 (Miss. Ct. App. 2011); *Wilson v.*

> *Fieldgrove*, 787 N.W.2d 707 (Neb. 2010); *In re Enquire Printing and Publ'g Co.*, 894 N.Y.S.2d 349 (Sur. Ct. 2009); *In re Estate of Laue*, 790 N.W.2d 765 (S.D. 2010); *Fletcher v. Ferry*, 917 A.2d 937 (Vt. 2007); *Roberts v. Robert*, 158 P.3d 899 (Ariz. Ct. App. Div. 1 2007)); *see also Francis C. Amendola*, et al., 34 C.J.S. Executors and Administrators § 178 (August 2023 update).

In re Higgins, 2023 WL 8823920, at *5 (Emphasis Added). *See Also Shovers v. Shovers*, 718 N.W.2d 130, 137 (Ct. App. Wisc. 2006); *cf. Sorrels*, 89 Fla. at 472 (where the Florida Supreme Court observed that, "[u]nder the common law title to property could not be suspended but must be vested in someone. Such vestiture or right of vestiture may be cut off or defeated, but we are aware of no authority for holding it as suspended ….").

The uniform treatment of real property interests among most states, including Florida, derives from their adoption of the Uniform Probate Code, which is substantially different in "numerous" ways from Wisconsin's probate statute. *Shovers*, 718 N.W.2d at 137 n.3; *Owen v. Wilson*, 399 So. 2d 498, 500 (Fla. 5th DCA 1981) ("Since section 732.606 was adopted as modified from the Uniform Probate Code, we find that the legislature wanted Florida's law to be similar to the laws of our sister states adopting this provision rather than prior Florida case law.").

Florida's legislature clearly intended to limit the personal representative's role and streamline the process of transferring real property. While appointed personal representatives obtain possessory rights and the power to sell assets, they do not obtain title. *See Jones v. Fed. Farm Mortg. Corp.*, 182 So. 226, 228 (Fla. 1938) ("So it is well recognized that while the personal representative of an intestate decedent is entitled to the possession and control of [non-homestead] real estate … the heirs at law of the decedent have a definite interest in the title to such real estate unless, and until, it becomes necessary for the personal representative to sell and dispose of such real estate to pay the debts of the decedent.").

Further, to the extent a personal representative is appointed by the probate court, any possessory interest it holds in [non-homestead] real property may be disposed of through post-judgment eviction and a writ of possession. Plaintiffs are not required to name possessory interests, e.g., tenants or personal representatives, in their foreclosure actions as they are not indispensable parties. *See e.g. Sedra Family Ltd. P'ship* v. 4750, LLC, 124 So. 3d 935, 936 (Fla. 4th DCA 2012) (affirming trial court's denial of tenant's motion to intervene in a foreclosure action, and noting that the tenant, as a

lessee, had only a possessory interest in the property); *Palm Beach Fla. Hotel v. Nantucket Ente*r., Inc., 211 So. 3d 42, 45 (Fla. 4th DCA 2016) (to terminate tenant's possessory interest, landlord must "institute an action for possession and obtain a final determination that Landlord was entitled to possession"). And while the personal representative may possess statutory power, the personal representative does not have title to the property. *See Jones*, 182 So. at 228; *Sorrels*, 89 Fla. at 472.

In sum, under long-standing Florida jurisprudence, the personal representative of the decedent's estate is not an indispensable party to an *in rem* foreclosure proceeding, and its absence as a defendant does not render the foreclosure judgment a nullity. Rather, US Bank could, and did, amend its complaint to drop Desbrunes and add the heirs/new property owners. *See Sas v. Postman*, 687 So. 2d 54, 55 (Fla. 3d DCA 1997) (finding that the filing of an amended complaint that omitted a party named in the original complaint effectively "dropped" that party). This change in parties and respective claims required amendment to the pleadings to add the new heirs and property owners. It did not require the substitution of a personal representative who had no title to the subject property.

For all of these reasons, this Court should grant rehearing, and reverse its ruling to be consistent with the long-standing practice.

II. BASED ON THE PLAIN LANGUAGE OF RULE 1.260, EVEN IF THE RULE APPLIED THE ONLY CONSEQUENCE OF NON-COMPLIANCE WAS DISMISSAL OF THE DECEASED PARTY, NOT NULLIFICATION OF THE FORECLOSURE JUDGMENT.

In the absence of ambiguity, the plain language of rule 1.260 controls. *See Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005). The Florida Supreme Court explained:

> When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent…In such instance, the statute's plain and ordinary meaning must control.

Daniels v. Fla. Dep't of Health, 898 So. 2d 61, 64 (internal citation omitted). The plain language of rule 1.260(a) requires "substitution of the proper parties." Anticipating the accomplishment of that requirement via motion, the rule sets a 90-day limit within which a party must move to substitute the property parties "after a statement noting the death is filed and served." Rule 1.260 provides only one consequence for a party's failure to comply with the rule's requirements: Dismissal of the deceased party. Fla. R. Civ. P. 1.260(a)(1).

US Bank named the "proper parties" and dismissed the deceased defendant via its amended complaint which satisfied the spirit and purpose of rule 1.260. *See Sas*, 687 So. 2d at 55. Notwithstanding, this Court found the amendment insufficient to satisfy the requirements of rule 1.260 and declared all the proceedings following Desbrunes' suggestion of death a nullity. This finding was contrary to the clear language of rule 1.260 and outside the purview of the "relief" contemplated when a party failed to comply with the rule. Nothing in the rule or in the cases relied upon by the Court provided a legal basis for declaring an *in rem* foreclosure proceeding against the indispensable parties, undisputed heirs and current owners of the property to be a nullity. Rather, the remedy is the dismissal of that defendant—which already occurred here when US Bank amended the complaint to remove Desbrunes. *See* Fla. R. Civ. P. 1.260(a). The Appellee's conduct in dropping Desbrunes was proper as he, nor his estate, possessed an interest in the property.

III. IF *DESBRUNES* IS NOT REVISED, IT WILL HAVE WIDESPREAD REPERCUSSIONS.

If this Court declines to revise *Desbrunes*, it will have widespread and profound consequences. In 2023, Florida ranked

third amongst the states with the highest foreclosure starts.[4] *Desbrunes* will have a direct impact on every foreclosure action where an interested party, whether a borrower, or subsequent owner not in privity of contract, passes away. Read literally, *Desbrunes* will force Lenders to file an avalanche of probate actions for individuals with whom the Lender has, at best, only a business relationship.

To put this in perspective, since 2013 there have been 830,283 foreclosure actions filed within the State, per ATTOM Data Solutions. **Ap. 2.** Of those, 441,895 went to foreclosure sale. **Ap. 2.** Many of these filings would be reverse mortgages, which are generally filed due to the borrower's death. The reverse mortgage files will require administration of a probate, and many conventional loans will follow, too, whenever an interested party passes.

Second, the effects of this ruling will ripple throughout the mortgage foreclosure community, including lenders, real estate professionals, title companies and bona fide purchasers. Any ambiguity or uncertainty introduced into the foreclosure process can

[4] *2023 U.S. Foreclosure Activity Snapshot,* DS News (January 11, 2024) https://dsnews.com/news/01-11-2024/foreclosure-filings-2023

undermine confidence in the judicial process, the market, and potentially jeopardize the stability of our housing sector.

The instability this ruling causes for already-foreclosed homes is likewise important to note. Certainty and finality in property ownership are fundamental principles of our legal system and community. However, this ruling calls into question the validity of foreclosure judgments/sales entered without a personal representative, rendering them potentially void or voidable, which would cast doubt on the ownership rights of countless properties.

The real-life impact on what the decision created for the real estate market in Florida can be seen by the foreclosure sale reports for the Broward, Miami-Dade and Palm Beach counties. **Ap. 3.** Each county had the following foreclosure sales set for 2022 and 2023: (1) Broward had 5,325; (2) Miami-Dade had 8,109 and (3) Palm Beach had 4,793. Of the total amount of sales, each county had the following number of properties sold to a third-party bidder: (1) Broward had 71%; (2) Miami-Dade had 72% and (3) Palm Beach had 74%.[5] To the extent any of these sales involved a deceased owner

[5] Auction.com provided data for sales it conducts in Florida showing a third-party sale rate of 58.6% for 2022 and 53.7% for 2023. **Ap. 2.**

that underlying Judgment would a "nullity" based on this decision and subject to being vacated.

This uncertainty not only undermines the confidence of buyers and sellers in the market, but also threatens the stability of communities where these properties are located. Vacant or abandoned homes resulting from legal challenges to completed foreclosures can lead to blight and reduced property values. In short, this Court's decision will have a tremendous negative impact.

Amici requests that this Court reconsider its basis for nullifying a regularly entered foreclosure judgment. In the event rehearing is denied and/or if a vote is not taken to hear the matter *en banc*, Amici urge the panel to submit any or all of the following questions to the Florida Supreme Court as issues of great public importance:

(1) UPON THE DEATH OF AN INTESTATE MORTGAGOR DURING AN *IN REM* FORECLOSURE ACTION, IS PLAINTIFF REQUIRED TO SUBSTITUTE PARTIES UNDER RULE 1.260 OR IS AMENDMENT OF THE COMPLAINT PROPER UNDER RULE 1.190 AND WHO ARE THE PROPER PARTIES TO BE SUBSTITUTED OR ADDED AS PARTY DEFENDANTS ASSUMING NO PERSONAL

Source: Auction.com and Auction.com analysis of public record data from ATTOM Data Solutions. Interestingly, the data provided also shows the average surplus amount that would have been paid to any record owners, or junior liens, which would also be subject to disgorgement based on this decision.

REPRESENTATIVE HAS BEEN APPOINTED FOR THE DECEASED?

(2) IS A PERSONAL REPRESENTATIVE OF A DECEASED MORTGAGOR'S ESTATE A NECESSSARY AND PROPER PARTY TO AN *IN REM* RESIDENTIAL MORTGAGE FORECLOSURE ACTION SEEKING TO FORECLOSE A MORTGAGE LIEN ON HOMESTEAD PROPERTY?

(3) UPON THE DEATH OF A MORTGAGOR IN AN *IN REM* ACTION SEEKING TO FORECLOSE A MORTGAGE LIEN, IS IT PROPER TO APPOINT AN AD LITEM FOR THE PURPOSE OF IDENTIFYING AND REPRESENTING THE INTERESTS OF THE KNOWN AND UNKNOWN HEIRS OF THE DECEASED MORTGAGOR?

CONCLUSION

The Amici request that this Court grant rehearing and replace its current opinion with an order affirming the foreclosure judgment entered in US Bank's favor. Alternatively, Amici request that rehearing be considered *en banc* and the opinion be replaced with an order affirming the judgment. Undersigned counsel hereby certify that we express a belief, based on a reasoned and studied professional judgment, that the case or issue is of exceptional importance. Alternatively, Amici request that this Court certify the above listed questions to the Florida Supreme Court as ones of great public importance and for any additional relief this Court deems just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion for leave to file amicus brief and amicus brief was served via E-mail to S. Alan Johnson, Esq. Email: service@sajlaw.com, *Attorney for Appellant*; Sara F. Holladay, Esq., Emily Y. Rottman, Esq., Kathleen D. Dackiewicz, Esq., *Attorneys for Appellee*, Email: flservice@mcguirewoods.com this 29 day of February 2024.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY the foregoing brief has been computer generated in Bookman 14-point font and does not exceed 5,000 words (excluding words in a caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block) in compliance with the applicable font and word count limits of 9.045 and 9.370(b).

By: */s/ Adam A. Diaz*
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