

Valls v. HSBC Bank USA, N.A.

Court of Appeal of Florida, Fourth District

May 12, 2021, Decided

No. 4D20-1984

Reporter

2021 Fla. App. LEXIS 6766 *; 46 Fla. L. Weekly D 1077; 2021 WL 1898121
appellee.

FIDEL ALONSO VALLS, Appellant, v. HSBC
BANK USA, N.A., et al., Appellee.

Judges: KLINGENSMITH, KUNTZ and ARTAU,
JJ., concur.

Notice: NOT FINAL UNTIL DISPOSITION OF
TIMELY FILED MOTION FOR REHEARING.

Opinion

Prior History: [*1] Appeal from the Circuit Court
for the Seventeenth Judicial Circuit, Broward
County; Andrea Gundersen, Judge; L.T. Case No.
CACE17014121.

ON CONFESSION OF ERROR

PER CURIAM.

Core Terms

borrower's, evidentiary hearing, trial court, issuance
of a certificate, certificate of title, foreclosure
judgment, judicial sale, confession of error, title to
property, bank's motion, timely file, conducting,
promissory, directing, vacate

Appellee, HSBC Bank USA, N.A. (the bank),
obtained a foreclosure judgment against Appellee,
Fidel Alonso Valls (the borrower), based on the
borrower's failure to make all payments due on the
promissory note secured by a residential mortgage
on the subject real property which was assigned,
along with the promissory note, to the bank by the
original mortgagee. Following judicial sale of the
property to the bank pursuant to the foreclosure
judgment, the borrower timely filed an objection to
the sale in accordance with [section 45.031, Florida
Statutes](#) (2017), as well as an accompanying motion
seeking to set aside the foreclosure judgment.
Without conducting an evidentiary hearing on the
borrower's objection, the trial court granted the
bank's motion seeking issuance of a certificate of
title to the property and directed the clerk of the
court to issue title to the property to the bank.

Counsel: W. Trent Steele of Steele Law, Hobe
Sound, for appellant.

Richard S. McIver of Kass Shuler, P.A., Tampa, for

The borrower [*2] appeals from the order directing issuance of the certificate of title to the bank. He argues that the trial court should not have granted the bank's motion, and directed issuance of the certificate of title, without first conducting an evidentiary hearing on his timely filed objection to the sale. The bank appropriately confesses error.

The statute authorizing judicial sale to satisfy a judgment states: "If timely objections to the bid are served, the objections shall be heard by the court." [§ 45.031\(8\), Fla. Stat.](#) (2017). This court has held "it is error to deny the party objecting under [section 45.031\(8\)](#) an evidentiary hearing." *McKnight v. Chase Home Fin. LLC*, 214 So. 3d 775 (Fla. 4th DCA 2017); see also *Regner v. Amtrust Bank*, 71 So. 3d 907, 907-08 (Fla. 4th DCA 2011) (trial court commits reversible error by issuing certificate of title while objections to judicial sale remain pending).

We therefore accept the bank's confession of error and, as this court did in *McKnight*, reverse and remand with directions that the trial court: (a) vacate the order directing the clerk to issue the certificate of title to the bank; (b) vacate the improperly issued certificate of title; and (c) conduct an evidentiary hearing on the borrower's objection. Nothing in this opinion shall be construed as a comment on the merits of the borrower's objection.

*Reversed and remanded [*3] with directions.*

KLINGENSMITH, KUNTZ and ARTAU, JJ., concur.