
**IN THE SUPREME COURT
STATE OF FLORIDA**

**CASE NO. SC 14-1276
4TH DCA CASE NO. 4D13-4425
LOWER TRIBUNAL NO. 2013-CA-011730**

KEVIN PROODIAN AND ANNETTE L. PROODIAN,

Petitioners,

v.

WASHINGTON MUTUAL BANK, F.A.,

Respondent.

**RENEWED ANSWER BRIEF ON JURISDICTION OF JPMORGAN
CHASE BANK, AS ACQUIRER OF CERTAIN ASSETS AND LIABILITIES
FROM THE FEDERAL DEPOSIT INSURANCE COMPANY AS
RECEIVER FOR WASHINGTON MUTUAL BANK**

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I. STATEMENT OF THE CASE AND OF THE FACTS

Petitioners Kevin J. Proodian and Annette L. Proodian (“Petitioners”) seek the discretionary jurisdiction of the Supreme Court to review an interlocutory order of the trial court that denied the motion of Petitioners to enter a default judgment against Washington Mutual Bank (“WaMu”). However, because the underlying action is still ongoing, the Fourth District Court of Appeal (“Appellate Court”) found this order was not immediately appealable. In accordance with settled Florida procedural law, the Appellate Court held that Petitioners are only entitled to challenge the order upon an appeal from any final judgment against them that may be entered in the future, and accordingly, any appeal of the trial court’s interlocutory order is not authorized and was dismissed. (A001.)¹ As set forth herein, the trial court’s denial of the motion for a default judgment—and the Appellate Court’s subsequent dismissal of the appeal based upon this non-final order—does not constitute a matter of significant public importance warranting review by the Florida Supreme Court.

On or about February 22, 2005, Respondents encumbered the real property located at 2790 Yarmouth Drive, Wellington, Florida 33414 (the “Property”) with a mortgage in favor of WaMu (the “Mortgage”) to secure a \$324,000 promissory

¹ References to “[A__]” refer to a specific number of Respondent’s Appendix filed concurrently with this Answer Brief. A true and correct copy of the Appellate Court’s Order granting Chase’s motion to dismiss the appeal, for which Petitioner seeks review by this Court, is included in Respondent’s Appendix.

note (the “Note”) that Respondents obtained in connection with the Property (collectively, the “Loan”). [R. 56-58.]² As a matter of public record, the Office of Thrift Supervision placed WaMu into receivership with the Federal Deposit Insurance Corporation (“FDIC”) on or about September 25, 2008, and JPMorgan Chase Bank, N.A. acquired certain of WaMu’s assets from the FDIC-Receiver pursuant to a Purchase and Assumption Agreement (“P&A Agreement”) of that same date. [R. 179-80.] By virtue of the P&A Agreement, JPMorgan Chase Bank, N.A. acquired WaMu’s interest in the Loan. [R. 179-80.]

On or about July 18, 2013, Petitioners filed their Verified Complaint to Quiet Title (“Complaint”), seeking to quiet title to the Property by cancellation of the Mortgage. On or about August 7, 2013, Respondent JPMorgan Chase Bank, N.A., individually *and as acquirer of certain assets and liabilities of Washington Mutual Bank* from the Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank (“Chase”), filed with the trial court an answer (“Answer”) to the Complaint. [R. 56-62.] On or about August 9, 2013, Petitioners filed a Motion for Entry of Judicial Default and a Final Default Judgment (“First Motion”) against WaMu with the trial court, and again, on October 8, 2013, Petitioners filed a Motion for Judicial Default and Motion for Default Judgment

² Throughout this brief, notations to [R.____] shall refer to a particular page number or numbers of the official record on appeal, or Appendix, filed by Petitioners in the Appellate Court on January 15, 2014.

(“Second Motion”) against WaMu, which was nearly identical to the First Motion. [R. 46-53, 107-12.]

Both motions argued that WaMu had not entered an appearance in the litigation and had therefore defaulted, and contested Chase’s appearance in the lawsuit as acquirer of WaMu’s assets. [R. 46-53, 107-12.] The trial court denied both motions by entering an order on or about September 18, 2013 (the “First Order”), denying the First Motion in its entirety, and entering a subsequent order about October 30, 2013 (the “Second Order”), denying the Second Motion in its entirety because Chase filed its Answer with the court, appearing both in an individual capacity and as acquirer of certain assets and liabilities of WaMu. [R. 81-82, 122-23.]

Petitioners then filed a Motion for Reconsideration of the Second Motion (“Motion for Reconsideration”), challenging the Second Order. [R. 124-78.] The Motion for Reconsideration repeated Petitioners’ assertions in the First and Second Motions and was likewise denied by the trial court on or about November 26, 2013. [R. 248.]

On or about November 19, 2013, Chase filed a Motion to Substitute Party Defendant (“Motion to Substitute”), in which it sought an order from the trial court substituting Chase as the proper defendant for WaMu. [R. 179-247.] Specifically, the Motion to Substitute indicated that on or about September 25, 2008, the Office

of Thrift Supervision (“OTS”) placed WaMu into receivership with the FDIC. [R. 179-247.] In the Motion to Substitute, Chase explained that it had entered into the P&A Agreement with the FDIC, wherein it acquired certain assets and liabilities of WaMu, including the Loan. [R. 179-247.] Chase attached a copy of the P&A Agreement—which is a public document available on the FDIC’s website—to its Motion to Substitute. [R. 179-247.] Due to the instant appeal, the trial court has not entered an order on the Motion to Substitute.

On November 27, 2013, although the trial court denied each of Petitioners’ three separate attempts to default WaMu and contest Chase’s appearance in its individual capacity and as acquirer of certain assets and liabilities of WaMu, Appellants filed a Notice of Appeal, taking an appeal from the Second Order to the Appellate Court. Chase moved to dismiss the appeal, and the Appellate Court agreed with Chase that the Second Order was an unappealable non-final order, entering an Order on April 4, 2014, and dismissing Petitioners’ appeal in its entirety. (A001.)

Still persisting, however, on April 17, 2014, Petitioners filed a Motion for Rehearing or Hearing En Banc (“Motion for Rehearing”) with the Appellate Court. Specifically, Petitioners argued: (a) that their recordation of a lis pendens prior to filing the lower court action precludes Chase from asserting any claim in the Property; (b) that Chase has not intervened in the lower court action; (c) that

Chase's involvement in the dispute involves "state action;" and (d) that Chase should not be substituted into the litigation as a party defendant. *None of these arguments were raised or even mentioned in Petitioners' Initial Brief filed with the Appellate Court.*³ Furthermore, the Appellate Court specifically held,

The appeal is from an *unappealable non-final order* and such is premature. Fla. R. App. P. 9.110(l). This court has considered appellants' claims to extraordinary writ jurisdiction as well, as contained in their initial brief, and they are also rejected as grounds for review of the *non-final order* denying appellants' motion for judicial default.

(A001 (emphasis added).) Finding no error in their decision, the Appellate Court entered an order on May 27, 2014, denying Petitioners' Motion for Rehearing.

After not one, but two orders from the Appellate Court holding that the Second Order is not appealable, Petitioners yet again sought relief to which they are not entitled by filing a Notice to Invoke the Discretionary Jurisdiction of the Supreme Court, arguing that the "intervention" of Chase in the lower court action is a matter of great public importance worthy of the Supreme Court's review. As discussed herein, Petitioners' arguments with respect to intervention are entirely inapplicable and irrelevant to the subject proceedings. Thus, Petitioners' request

³ Notably, the entire Jurisdictional Brief of Petitioners argues that Chase improperly intervened in the trial court action. Petitioners' intervention argument, however, was never mentioned, much less discussed, until their Motion for Rehearing. See *Jacobs v. Wainwright*, 450 So. 2d 200, 201 (Fla. 1984) (acknowledging that it is well-established that a motion for rehearing is an inappropriate vehicle for rearguing merits of the case).

that this Court exercise its discretionary jurisdiction over the instant proceedings should be declined.⁴

II. ARGUMENT

The entire Jurisdictional Brief of Petitioner (“Jurisdictional Brief”) is premised on the faulty argument that Chase has attempted to intervene in the lower court action without seeking approval of the trial court. This is a disingenuous misstatement of the case, and Petitioners’ request that this Court exercise jurisdiction of the matter is not only procedurally improper, but is in no way a matter of great public importance.

First, Petitioners’ action in taking this appeal from the trial court’s decision to deny the Second Motion was procedurally improper, and the appeal was properly dismissed by the Appellate Court. The Florida Rules of Appellate Procedure are clear—“[i]f a notice of appeal is filed before rendition of a final order, the appeal shall be subject to dismissal as premature.” Fla. R. App. P. 9.110(l). “In order to be final for appellate purposes, an order must demonstrate an end to the judicial labor in the case. The traditional test for finality is *whether the*

⁴ On July 22, 2014, Chase filed a Notice of Noncompliance pointing out to the Court that, according to the Florida Rules of Appellate Procedure “[i]f jurisdiction is invoked under rule 9.030(a)(2)(A)(v) (certifications of questions of great public importance by the district courts to the supreme court),” as it is here, “*no briefs on jurisdiction shall be filed.*” Fla. R. App. P. 9.120(d) (emphasis added). The Clerk of the Supreme Court, however, treated this notice as a Motion to Strike and denied same by an order dated July 28, 2014. Thus, Chase files the instant Renewed Answer Brief.

decree disposes of the cause on its merits leaving no questions open for judicial determination except for execution and enforcement of the decree if necessary.”

Hoffman v. Hall, 817 So. 2d 1057, 1058 (Fla. 1st DCA 2002) (internal citation omitted) (emphasis added); *see also Stanberry v. Escambia Cnty.*, 813 So. 2d 278, 280 (Fla. 1st DCA 2002) (“The basic rule is that an order is final only if it brings all judicial labor in the lower tribunal to a close.”); *Welch v. Res. Trust Corp.*, 590 So. 2d 1098, 1099 (Fla. 5th DCA 1991) (holding test for finality of order is whether no questions are open for judicial determination).

Additionally, “[a] non-final order for which no appeal is provided by Florida Rule of Civil Procedure 9.130 is reviewable by petition for certiorari only in limited circumstances.” *Hoffman*, 817 So. 2d at 1057. “Certiorari is an extraordinary remedy that should not be used to circumvent the interlocutory appeal rule that authorizes appeals from only a few types of non-final orders.” *Cohen v. D.R. Horton, Inc.*, 121 So. 3d 1121, 1124 (Fla. 5th DCA 2013). The limited grant of certiorari is premised “upon the rationale that ‘piecemeal review of non-final trial court orders will impede the orderly administration of justice and serve only to delay and harass.’” *Citizens Prop. Ins. Corp. v. San Perdido Ass’n, Inc.*, 104 So. 3d 344, 349 (Fla. 2012) (quoting *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214, 214-15 (Fla. 1998)). In any event, an appellant is only entitled to a writ of certiorari if there exists: “(1) a departure from the essential requirements of the

law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.” *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004) (citing *Bd. of Regents v. Snyder*, 826 So. 2d 382, 387 (Fla. 2d DCA 2002)). However, Florida courts have “never held that requiring a party to continue to defend a lawsuit is irreparable harm for the purposes of invoking the jurisdiction of an appellate court to issue a common law writ of certiorari.” *Citizens Prop. Ins. Corp.*, 104 So. 3d at 353.

Here, the Second Order has in no way “br[ought] all judicial labor in the lower tribunal to a close.” *See Stanberry*, 813 So. 2d at 280. Quite the opposite, the rights of the parties have not been considered by the trial court, and the merits of the case have not been discussed. In fact, no substantive issue in the underlying action has been litigated at the trial court level. The only issue that has arisen is whether Petitioners are entitled to a default judgment against WaMu despite that Chase, as acquirer of certain assets and liabilities of WaMu by virtue of the publicly-available P&A Agreement, has entered an appearance and filed its Answer on behalf of WaMu. The trial court has flatly rejected Petitioners’ position, not once, not twice, but *three* times. Furthermore, the Appellate Court has rejected Petitioners’ arguments *twice*. Because no final order has been entered in the trial court, the lower courts are correct in holding that appeal is premature. Fla. R. App. P. 9.110(l).

Furthermore, here, Petitioners were not entitled to a writ of certiorari by the Appellate Court since they have not shown, nor can they show, that: (1) the trial court departed from “the essential requirements of the law” by failing to default WaMu, a defunct entity, which was seized by the OTS; (2) that the Second Order will result in material injury to Appellants for the remainder of the litigation; or (3) that any purported “material injury” cannot be remedied on post-judgment appeal. *See Reeves*, 889 So. 2d at 822.

Second, Petitioners’ arguments are without substantive merit and their Jurisdictional Brief sets forth a legal posture—specifically, intervention—which is entirely irrelevant to the facts of the case. Petitioners filed suit against WaMu. However, as explained fully herein, WaMu was placed into receivership on or about September 25, 2008. Further, by virtue of, and evidenced by, the P&A Agreement, Chase acquired certain of WaMu’s assets from the FDIC-Receiver, *including WaMu’s interest in the Loan*. [R. 204-79.] Indeed, *WaMu no longer exists*, and it cannot appear as a party to litigation. *See Deutsche Bank Nat’l Trust Co. v. Fed. Deposit Ins. Co.*, 717 F.3d 189, 190-91 (D.D.C. 2013) (discussing failure of WaMu and Chase’s acquisition of WaMu’s assets). Therefore, *Chase, as acquirer of WaMu’s assets is the proper party to appear on behalf of WaMu*. *See Lazarre v. JPMorgan Chase Bank, N.A.*, 780 F. Supp. 2d 1320, 1327 n.12 (S.D. Fla. 2011) (taking judicial notice of Chase’s acquisition of WaMu’s assets and

liabilities). *Chase has not intervened*—it has simply appeared in the litigation as the successor in interest to WaMu. Chase’s appearance is not improper. Additionally, by virtue of its Motion to Substitute, Chase has sought an Order from the trial court to allow it to substitute into the litigation as the proper defendant since WaMu was placed into receivership in 2008. *See* Fla. R. Civ. P. 1.260(c) (“In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.”).

In sum, Petitioners’ Jurisdictional Brief is a misstatement of the procedural posture of the case and a disingenuous attempt to assert novel arguments that were not raised at the trial court level, but were first introduced in connection with their Motion for Rehearing filed with the Appellate Court. Furthermore, the Jurisdictional Brief *in no way* demonstrates that Chase’s appearance as successor of WaMu’s interest in the Mortgage is a matter of great public importance sufficient to warrant attention of the Supreme Court. Thus, Chase respectfully requests that this Court deny Petitioners’ request for discretionary jurisdiction.

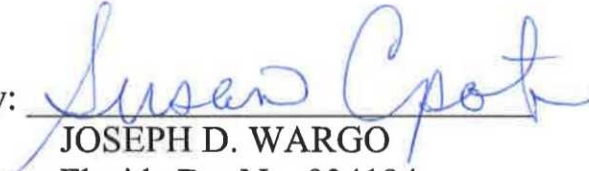
III. CONCLUSION

For the reasons stated herein, this Court should decline to exercise its discretionary jurisdiction over the instant matter because it does not implicate any issues of great public importance.

Dated this 9th day of September, 2014.

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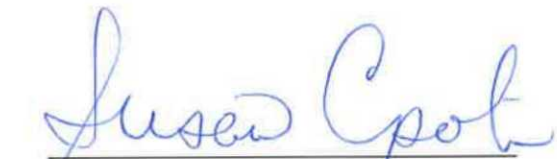
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via First-Class U.S. Mail upon, **Kevin J. Proodian & Annette L. Proodian**, *pro se Petitioners*, 2790 Yarmouth Drive, Wallington, Florida 33414, on September 9, 2014.


SUSAN CAPOTE

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure, I certify that this brief has been typed in Times New Roman 14-point font.


SUSAN CAPOTE
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