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Manuel Farach

Gavida v. Specialized Loan Servicing LLC, Case No. 2D19-1069 (Fla. 2d DCA 2020).
Inadequacy of consideration, surprise, accident, mistake imposed on complainant, together with irregularity in the conduct of the sale, are proper bases for vacating a foreclosure sale.

VME Group International, LLC v. The Grand Condominium Association, Inc., Case No. 3D19-139 (Fla. 3d DCA 2020).
A party may not move for an award of appellate attorney's fees in the trial court until the appellate court issues its mandate.

Rivas v. Tsang, Case No. 5D19-965 (Fla. 5th DCA 2020).
A property owner who takes no action when he realizes his property was fraudulently conveyed away is without remedy if the property is sold again, this time to a bona fide purchaser without notice.

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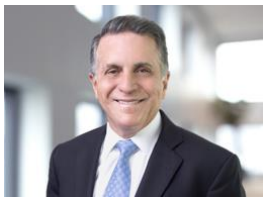

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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ARMANDO A. GAVIDIA and ANNA B. GAVIDIA, a/k/a ANNA GAVIDIA, a/k/a ANNA GAVIDA,

Appellants,

v.

SPECIALIZED LOAN SERVICING LLC; AMERICAN GENERAL HOME EQUITY, INC.; THREE OAKS I MASTER ASSOCIATION, INC.; and TIMBER LAKE AT THREE OAKS HOMEOWNERS' ASSOCIATION, INC.,

Appellees,

and

RICHARD DELEKTA,

Intervenor/Appellee.

Case No. 2D19-1069

Opinion filed April 24, 2020.

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Lee County; James R. Shenko, Judge.

Steven K. Teuber of Teuber Law, PLLC, Fort Myers, for Appellants.

Nicole R. Ramirez of eXL Legal, PLLC, St. Petersburg, for Appellee Specialized Loan Servicing, LLC.

Brian J. Delekta of Delekta & Delekta,
P.C., Memphis, Michigan, for
Intervenor/Appellee Richard Delekta.

No appearance for remaining Appellees.

SILBERMAN, Judge.

A final judgment of foreclosure was entered in favor of Plaintiff Specialized Loan Servicing LLC (SLS) against Defendants Armando A. Gavidia and Anna B. Gavidia. The Gavidias now appeal an order that denies SLS's motion to vacate the foreclosure sale and certificate of sale and assert that the loan had been reinstated prior to the foreclosure sale. This court granted the motion of Richard Delekta, who is the third-party purchaser of the property, to intervene in this appeal. The Gavidias raise two issues on appeal, and we reject without further discussion the argument in issue one that the trial court erred by not allowing them to exercise their right of redemption. As to issue two, because the trial court did not apply the correct legal standard in denying relief, we reverse the appealed order and remand for further proceedings.

The foreclosure sale in this case was set for January 7, 2019. On the Friday before the sale, on January 4, 2019, Mr. Gavidia filed a pro se motion to cancel the sale. He alleged that payment had been made to reinstate the loan and attached documents reflecting the amount SLS required for reinstatement of $32,381.46 and reflecting that a wire transfer from Mrs. Gavidia's account in the required amount had been made on January 3, 2019.

SLS also filed a motion to cancel the sale on January 4, 2019. The form motion included the reason for cancellation in the space marked "Other" as "Plaintiff has

received confirmation funds have been received; however, not yet applied. Plaintiff wishes to cancel the sale to provide time to properly review and apply the funds for a possible reinstatement."

Neither motion was heard before the sale occurred on January 7, 2019. SLS filed a timely motion to vacate the foreclosure sale and certificate of sale (motion to vacate) on January 9, 2019, pursuant to section 45.031(5), Florida Statutes (2018), and alleged equitable grounds for relief. Section 45.031(5) provides that "[i]f no objections to sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title." Despite SLS's objection to the sale, the clerk issued the certificate of title on January 18, 2019.[1]

A hearing on the motion to vacate was not conducted until February 18, 2019, and our record contains no transcript of the hearing. The notice of hearing indicates that a five-minute hearing was scheduled, and the Gavidias contend that the court did not provide time for an evidentiary hearing. The trial court denied the motion in a boilerplate order.

SLS filed an emergency motion for reconsideration requesting that the court vacate the sale, the certificate of sale, and the certificate of title. In the motion, SLS asserted that the Gavidias would be irreparably harmed by the loss of their home if the sale was not vacated. SLS also asserted that two motions to cancel sale were in the public record and available to prospective purchasers before the sale. SLS asserted that if the sale was vacated that the most the third-party purchaser "stands to

[1]SLS's motion to vacate is appropriately considered as an objection to the sale. See Arsali v. Chase Home Fin. LLC, 121 So. 3d 511, 513 (Fla. 2013).

lose is the court registry fee. And the Court can even require that another party to the action pay that fee."

Based on its review of the file and the emergency motion for reconsideration, the trial court denied that motion and explained its reasons for denying the motion to vacate. The trial court found that the pro se motion to cancel the sale "with numerous attached hearsay documents was legally insufficient to cancel the sale." The court added that SLS's motion to cancel the sale was untimely and that it was legally insufficient to cancel the sale because it did not allege that SLS "received sufficient funds and that the loan was reinstated."

The trial court also found that the motion to vacate sale and the emergency motion for reconsideration failed to argue "that there were any irregularities of the sale itself." The court noted that at the hearing on the motion to vacate when the court inquired of counsel, SLS declined to "stipulate to making the 3rd party purchaser completely financially whole (court registry fee, etc.)." Further, SLS did not stipulate to make the purchaser financially whole in its motion for reconsideration.

On appeal, the Gavidias argue that a mistake by SLS's counsel occurred which resulted in the foreclosure sale not being cancelled and that as a result they lost their residence of over seventeen years, despite making the payment to SLS required to reinstate the loan. Neither SLS's motion nor the Gavidias' motion to cancel the sale was ever heard, and SLS filed its motion to vacate sale two days after the sale. Despite this timely objection to the sale, the clerk of court issued the certificate of title.[2] The

[2]"The Clerk of the Court lacks authority to issue a certificate of title or a writ of possession when an objection to a foreclosure sale is timely filed." Opportunity Funding I, LLC v. Otetchestvennyi, 909 So. 2d 361, 362 (Fla. 4th DCA 2005).

Gavidias cite to Arsali v. Chase Home Finance LLC, 121 So. 3d 511 (Fla. 2013), to support their argument that equitable grounds exist to justify setting aside the foreclosure sale.

SLS's counsel acknowledged in its motion to vacate sale that its motion to cancel sale was sent directly to the trial court, but "the judicial packet seems to have been mistakenly sent only via Fed Ex and not uploaded directly to the court as an Emergency Motion." The motion to vacate sale also alleged that the Gavidias tendered sufficient funds to SLS to reinstate the loan on or about January 3, 2019. SLS specifically alleged that "the foreclosure sale should be vacated in order to avoid an inequitable result against the Defendant who has reinstated the loan and did not suspect their Property would be sold." In its motion, SLS relied upon Arsali and Moran-Alleen Co. v. Brown, 123 So. 561 (Fla. 1929). SLS argued that it and the Gavidias entered into an agreement in which the Gavidias

> could tender funds to reinstate the loan and thereby have the foreclosure sale cancelled and the case dismissed. Therefore, it was the parties' intentions that the foreclosure sale scheduled for January 7, 2019 be cancelled. Due to a mistake, Plaintiff's motion was not reviewed or ruled upon by the court prior to the foreclosure sale, and the property was sold to a third party purchaser.

SLS further alleged "in the interest of equity" that the foreclosure sale and certificate of sale should be vacated and that Delekta, as third-party purchaser, should be "made whole by returning any proceeds tendered as payment for the Property."

An order on a motion to set aside a foreclosure sale is generally reviewed for an abuse of discretion. See Arsali, 121 So. 3d at 519. But when the trial court does

not apply the correct legal standard, we review that question of law de novo. See id. at 514; Paul v. Wells Fargo Bank, N.A., 68 So. 3d 979, 986 (Fla. 2d DCA 2011).

In Arsali, our supreme court approved the district court's result to the extent that it affirmed the trial court's decision to vacate a foreclosure sale and certificate of sale. Arsali, 121 So. 3d at 512. The supreme court also approved the district court's "decision to the extent it affirme[d] the trial court's order for the return of all monies paid by the third-party purchaser in the ill-fated judicial foreclosure sale of the residential property at issue." Id. The supreme court held that proof of an inadequate bid price is not required to set aside a judicial foreclosure sale. Id. at 520.

The Arsali court determined that "[t]he borrowers alleged and proved adequate equitable grounds for the trial court to set aside the judicial foreclosure sale." Id. at 519-20. The court pointed out that no one alleged "that there was anything unlawful about how the scheduled judicial foreclosure sale was conducted." Id. at 513. Rather, "the dispute surrounded the equities pertaining to the noncancellation of the judicial foreclosure sale and its eventual vacation by the trial court." Id. In Arsali, the plaintiff offered the borrowers the opportunity to reinstate the mortgage, and the borrowers timely sent a cashier's check for the full reinstatement amount. Id. The plaintiff's counsel received the check on May 4, 2011, but failed to arrange for cancellation of the foreclosure sale. The sale occurred on May 9, 2011. The borrowers were unaware that the sale had not been cancelled, and they filed an objection to the sale on May 13, 2011, by filing a motion to vacate the foreclosure sale and the certificate of sale. The trial court conducted a hearing on the motion at which it considered evidence that included a copy of the letter offering reinstatement, the

cashier's check, and mail receipts. Id. The trial court granted the borrower's motion and "ordered the clerk of court to return all funds paid by the third-party purchaser." Id.

The supreme court recognized that "[o]n the question of gross inadequacy of consideration, surprise, accident, or mistake imposed on complainant, and irregularity in the conduct of the sale, *this court is committed to the doctrine that a judicial sale may on a proper showing made, be vacated and set aside on any or all of these grounds."* Id. at 515 (quoting Brown, 123 So. at 561). The Arsali court reiterated that "this court is committed to the doctrine that a judicial sale may on a proper showing made, be vacated and set aside on any or all [equitable] grounds." Id. at 515 (alteration in original) (quoting Brown, 123 So. at 561).

Here, SLS alleged equitable grounds in its motion to vacate that are very similar to the facts of Arsali. And unlike the plaintiff in Arsali, the Gavidias and SLS each filed a motion to cancel the foreclosure sale prior to the sale, but the motions were not heard before the sale. In Arsali, no motion to cancel the sale was even filed before the sale occurred. See id. at 513.

Part of the reason the trial court denied relief here was because there was no allegation of "any irregularities of the sale itself." In doing so, the trial court applied an incorrect legal standard and failed to consider the equitable grounds alleged as Arsali allows. The supreme court in Arsali expressly recognized that no allegations regarding how the "foreclosure sale was conducted" were needed when the issue concerned the equities of allowing a foreclosure sale to stand when the plaintiff and the borrowers had agreed to a reinstatement of the loan prior to the sale. Id. Here, the trial

court failed to follow the correct legal standard and should have allowed a hearing for SLS to prove its allegations that the loan had been reinstated.

Further, the parties to the foreclosure action had agreed to cancel the sale. It is arguable that the failure to cancel the sale was a mistake that was, in fact, related to the foreclosure sale. See Skelton v. Lyons, 157 So. 3d 471, 473 (Fla. 2d DCA 2015) (stating 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, the foreclosure sale itself") (quoting IndyMac Fed. Bank FSB v. Hagan, 104 So. 3d 1232, 1236 (Fla. 3d DCA 2012)). Moreover, based on Arsali, an agreement to reinstate a loan prior to the foreclosure sale can provide a sufficient equitable reason to allow a court to vacate a sale.

In addition, the trial court appeared to deny relief on the basis that SLS failed to stipulate to make Delekta "financially whole (court registry fee, etc.)." In Arsali, the supreme court approved the trial court's judgment to the extent that it required the return of all monies that the third-party purchaser paid in the foreclosure sale. 121 So. 3d at 512. Florida courts have the power to provide equitable remedies to litigants when necessary. Id. at 518. Thus, Arsali establishes that the court has authority to direct payment to the third-party purchaser.

SLS requested in its motion to vacate that Delekta be "made whole by returning any proceeds tendered as payment for the Property." In its motion for reconsideration, SLS also acknowledged that the trial court can require another party to the action to pay the court registry fee. Thus, the trial court could have used its

equitable powers to require that the purchase price and court registry fee be returned to Delekta.

In conclusion, because the trial court did not apply the correct legal standard, we reverse the order denying the motion to vacate and remand for reconsideration. On remand, the trial court should consider the equitable grounds alleged, as Arsali allows, with a hearing to allow those equitable grounds to be established.

Reversed and remanded.

KELLY and MORRIS, JJ., Concur.

Third District Court of Appeal

State of Florida

Opinion filed April 22, 2020.

No. 3D19-139
Lower Tribunal No. 17-25120

VME Group International, LLC, et al.,
Appellants,

vs.

The Grand Condominium Association, Inc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Veronica Diaz, Judge.

Law Offices of Karen J. Haas, and Karen J. Haas; Law Offices of Mark A. Dienstag, and Mark A. Dienstag, for appellants.

Cole, Scott & Kissane, P.A., and Melinda S. Thornton; Roniel Rodriguez IV, P.A., and Roniel Rodriguez IV, for appellees.

Before SCALES, HENDON and LOBREE, JJ.

ON MOTION FOR REVIEW

SCALES, J.

Appellants VME Group International, LLC and Omni Property Management, LLC (collectively, "VME") seek review of the trial court's January 15, 2020 order awarding appellate attorneys' fees to appellee Stuart Kalb pursuant to this Court's September 25, 2019 fee entitlement order. Because the trial court was without jurisdiction to enter the challenged order, we vacate that order. We also take this opportunity to modify this Court's September 25, 2019 fee entitlement order to clarify that it is conditioned upon the appellees[1] ultimately prevailing in the underlying litigation.

I. RELEVANT BACKGROUND

On July 26, 2018, VME filed in the lower court its second amended complaint against Kalb and others, raising claims against Kalb for declaratory relief, breach of fiduciary duty, civil conspiracy and violation of restraint of trade. The same day, VME sought a temporary injunction based on its underlying claims for declaratory relief. The trial court denied VME's motion for a temporary injunction and VME appealed to this Court the trial court's non-final order denying temporary injunctive relief to VME.

On September 25, 2019, this Court affirmed the trial court's order denying VME temporary injunctive relief, reproducing the trial court's order in full in our

[1] This Court's September 25, 2019 fee entitlement order also granted the motion of co-appellee, The Grand Condominium Association, Inc. ("the Association"), seeking appellate attorneys' fees.

opinion. See VME Grp. Int'l, LLC v. Grand Condo. Ass'n, 44 Fla. L. Weekly D2420, 2019 WL 4656226 (Fla. 3d DCA Sept. 25, 2019). Also on September 25, 2019, this Court entered an order granting Kalb and the Association's motions for appellate attorneys' fees and "remanded to the trial court to fix the amount." Regrettably, our September 25, 2019 fee entitlement order did not contain language indicating that the appellees' entitlement to fees was conditioned upon Kalb or the Association ultimately prevailing in the litigation.

VME timely filed in this Court a motion for rehearing and rehearing *en banc* of our September 25, 2019 affirmance opinion, which we denied on October 25, 2019. On November 1, 2019, VME's counsel filed a motion to withdraw that included a request for a thirty-day delay in the issuance of our mandate to allow VME to obtain new counsel. On November 5, 2019, we entered an order granting VME's motion. The order required VME to obtain new counsel within thirty days, and our order also noted that the Court's mandate would be issued "thirty-one (31) days thereafter." Notwithstanding this Court's November 5, 2019 order, on November 20, 2019, the mandate was inadvertently entered; the mandate was recalled that same day by separate Court order. No mandate enforcing our September 25, 2019 affirmance opinion or our September 25, 2019 fee entitlement order has yet issued from this Court.

Notwithstanding the fact that no mandate has issued from this Court, on December 6, 2019, Kalb, relying on this Court's September 25, 2019 fee entitlement order, filed a motion in the lower court seeking a determination of the amount of appellate attorneys' fees he was entitled to recover.[2] The trial court held an evidentiary hearing on Kalb's attorneys' fees motion and, on January 15, 2020, entered the challenged order awarding Kalb $38,250 in appellate attorneys' fees, plus statutory interest.[3] VME timely seeks appellate review of the lower court's January 15, 2020 attorneys' fees order. See Fla. R. App. P. 9.400(c) ("Review of orders rendered by the lower tribunal under this rule shall be by motion filed in the court within 30 days of rendition.").

II. ANALYSIS

In its motion for review, VME argues, among other things, that: (1) the trial court lacked jurisdiction to enter the January 15, 2020 attorneys' fees order because the mandate from this Court – finalizing both our September 25, 2019 affirmance opinion and the accompanying September 25, 2019 fee entitlement order – had not yet issued; and (2) awarding unconditional, appellate attorneys' fees to Kalb at this

[2] The Association also filed a similar motion, but did not seek to have its appellate attorneys' fees immediately determined and awarded by the trial court, and has not yet set for hearing its motion to determine fees.

[3] VME asserts that Kalb has already executed on this order by garnishing VME's bank account.

stage of the proceedings was premature because no prevailing party has been established in the lower tribunal. We agree with VME on both points and address each in turn.

A. The trial court was without jurisdiction to enter the January 15, 2020 attorneys' fees order prior to this Court's mandate issuing

An appellate court's order is not final until its issuance of the mandate. See Fla. R. App. P. 9.340; Henderson v. State, 679 So. 2d 805, 808 n.1 (Fla. 3d DCA 1996) ("Opinions of appellate courts are not final until the time for rehearing and the disposition thereof, if any, has run."). The mandate of an appellate court is the official method of communicating its judgment to the lower tribunal. Colonel v. Reed, 379 So. 2d 1297, 1298 (Fla. 4th DCA 1980). The appellate court does not lose jurisdiction over the matter until the mandate is issued; therefore, the trial court cannot regain jurisdiction over the matter until the appellate court issues its mandate. Id. A trial court lacks jurisdiction to render an order on a matter prior to the appellate court's issuance of a mandate on that matter, and such a premature order is subject to vacatur by the appellate court. Id.; see also Richardson v. State, 257 So. 3d 605, 606 (Fla. 1st DCA 2018); Jimenez v. State, 215 So. 3d 1259, 1259-60 (Fla. 3d DCA 2017); Leatherwood v. State, 168 So. 3d 328, 330 (Fla. 3d DCA 2015); State v. Sharp, 564 So. 2d 217, 217 (Fla. 4th DCA 1990).[4]

[4] We are aware that, absent a stay, during the pendency of appellate review of a non-final order, Florida Rule of Appellate Procedure 9.130(f) expressly authorizes a trial

Therefore, we vacate the trial court's January 15, 2020 attorneys' fee order because it was entered without jurisdiction. The trial court shall take the necessary actions to restore the parties to their respective positions as if the January 15, 2020 attorneys' fee order had not been entered.

B. Our September 25, 2019 fee entitlement order should have been conditioned upon Kalb ultimately prevailing in the matter

In his motion seeking appellate attorneys' fees filed in this Court, Kalb relied upon a contractual provision contained within the Association's Declaration of Condominium and section 718.303 of the Florida Statutes, both of which condition entitlement to fees on being the prevailing party below. As this Court's prior opinion affirming the denial of temporary injunctive relief makes clear, however, several of VME's "remaining claims for injunctive relief all turn on the payment of funds or loss of potential short-term rental income. As such, they present claims for quantifiable damages and are all remediable at law." VME Grp. Int'l, LLC, 2019 WL 4656226 at *2. Put another way, while Kalb prevailed on VME's temporary injunction motion, Kalb ultimately might not prevail in this litigation. Hence, this

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court, to "proceed with all matters, including trial or final hearing, except that the lower tribunal may not render a final order disposing of the cause pending such review absent leave of the court." We do not, however, read this rule to authorize a trial court to enter a judgment fixing the amount of appellate attorneys' fees for an appeal that is not final and over which the appellate court still retains jurisdiction. Indeed, until the mandate issues, the appellate court's opinion, and any fee award that may be intertwined with the opinion, is not final. See Fla. R. App. P. 9.340; Henderson, 679 So. 2d at 808 n.1.

Court's September 25, 2019 fee entitlement order should have conditioned Kalb's entitlement to appellate attorneys' fees on Kalb ultimately prevailing in the underlying case.

This Court's September 25, 2019 fee entitlement order instructing the trial court to "fix the amount" of appellate fees was premature, because VME's underlying claims have not yet been resolved. See Balmaseda v. Okay Ins. Exch. of Am. LLC, 240 So. 3d 146, 148 (Fla. 3d DCA 2018) ("Based on our review, we conclude that this Court's instructions to the trial court 'to fix amount' has caused the trial court to prematurely address and rule on Okay Insurance's motion for appellate attorney's fees because Okay Insurance's counterclaim has not yet been fully resolved."). We therefore modify, *nunc pro tunc*, this Court's September 25, 2019 fee entitlement order to clarify that Kalb's entitlement to appellate attorneys' fees in this appeal is conditioned upon Kalb ultimately prevailing in the lower proceedings on VME's claims against him.[5] Id. ("The order granting Okay Insurance's motion for attorney's fees should have provided that the fees were

[5] As referenced in footnote 1, *supra*, this Court's September 25, 2019 fee entitlement order also awarded appellate attorneys' fees to the Association, which also based its entitlement to fees on the Association's Declaration of Condominium and section 718.303. We therefore modify, *nunc pro tunc*, this Court's September 25, 2019 fee entitlement order to clarify that, as with Kalb's entitlement to fees, the Association's entitlement to fees is similarly conditioned upon the Association ultimately prevailing in the lower proceeding on the claims against it.

contingent on Okay Insurance ultimately prevailing in the lower tribunal on its counterclaim against Balmaseda.").

III. CONCLUSION

The trial court lacked jurisdiction to enter the January 15, 2020 attorneys' fee order awarding Kalb appellate attorney's fees because the mandate from this Court for the subject appeal had not yet issued.[6] Therefore, we vacate the trial court's January 15, 2020 attorneys' fee order and instruct the trial court to take the necessary actions to restore the parties to their respective positions as if the January 15, 2020 attorneys' fee order had not been entered. Further, we amend, *nunc pro tunc*, this Court's September 25, 2019 fee entitlement order to clarify that the appellees' entitlement to attorneys' fees in this appeal are conditioned upon the appellees ultimately prevailing in the lower court proceedings.

Lower court's attorneys' fee order vacated, with instructions; this Court's fee entitlement order modified.

[6] The Clerk of this Court is directed to issue, immediately following the issuance of this opinion, the mandate that finalizes both our September 25, 2019 affirmance opinion and, as modified herein, our accompanying fee entitlement order.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

LENIN E. RIVAS,

Appellant,

v. Case No. 5D19-965

SHIU M. TSANG, GENEVIEVE L. TSANG, CESAR A. SUAREZ-RIVERA, AMELIA TORRES, ET AL.,

Appellees.

_____/

Opinion filed April 24, 2020

Appeal from the Circuit Court
for Osceola County,
Margaret H. Schreiber, Judge.

Jesus Irizarry, of Irizarry Mendez PL, Orlando, for Appellant.

Nancy E. Brandt, of Bogin, Munns & Munns, P.A., Orlando, for Appellee, Genevieve L. Tsang.

No Appearance for other Appellees.

EDWARDS, J.

This case exemplifies the equitable principle that where one of two seemingly innocent parties must suffer a loss caused by the misdeed of a third party, "the least innocent should suffer, and the least innocent is the one who could have prevented the misdeed." *Countrywide Funding Corp. v. Palmer*, 589 So. 2d 994, 996 (Fla. 2d DCA

1991). We affirm the trial court's order granting summary judgment in favor of Appellee, Genevieve L. Tsang.

Beginning in 2011, Appellant, Lenin Rivas, allowed his cousin, Cesar A. Suarez-Rivera, to manage Appellant's rental home. Also in 2011, Suarez allegedly created a fraudulent and forged power of attorney, which he used to sell Appellant's property to innocent purchasers, the Paganis, in December 2012. Appellant was alerted to the sale in February 2013 when the lender on the rental property stopped debiting his account for the monthly mortgage payments. The lender told Appellant his mortgage was satisfied when his property was sold. In February 2013, Appellant confirmed both the fact of the sale to the Paganis and Suarez's use of the allegedly forged power of attorney to accomplish the sale. After Appellant confronted him, Suarez allegedly admitted what he had done and gave Appellant access to the closing documents.

Initially, Appellant did nothing beyond speaking with Suarez. He did not notify the police, did not seek to set aside the sale to the Paganis, and did not notify the Paganis of this state of affairs. Appellant did hire an attorney in February 2014, but he did not cause a lis pendens or lawsuit of any kind to be filed then.

Unaware that there was anything to be concerned about, in April 2014, the Paganis sold the property to Appellee, who qualifies in every sense of the word as a bona fide purchaser for value without knowledge of any misdeed. Appellant filed suit against Appellee seeking a declaration of their respective rights to the home in question sometime in 2015. Appellant also named Suarez and a purported accomplice of Suarez as defendants in the same suit, but sought monetary relief as to those two defendants.

Both parties moved for summary judgment. The undisputed facts before the trial court were as laid out above. Appellant had more than a year of actual knowledge of the allegedly fraudulent transfer that Suarez had accomplished, but took no action to put anything in the public record. Accordingly, the trial court found that as between Appellee and Appellant, Appellant was the least innocent party and his conduct or failure to act contributed to the losses.

It has long been the law in Florida that "[i]f one man knowingly, though he does it passively by looking on, suffers another to purchase and expend money on land under an erroneous opinion of title, without making known his claim, he shall not afterwards be permitted to exercise his legal right against such person." *Coram v. Palmer*, 58 So. 721, 722 (Fla. 1912) (citing *Hagan v. Ellis*, 22 So. 727, 729 (Fla. 1897)); *accord Unity Banking & Saving Co. v. Bettman*, 217 U.S. 127, 135 (1910) (finding that while "the general rule" is that "[a]s against the true owner, a right of property cannot be acquired by means of a forged written instrument relating to such property," an exception to this general rule arises "where the owner by laches, or by culpable, gross negligence, *or by remaining silent when he should speak*, has induced another, proceeding with reasonable caution, to act with reference to the property, in the belief that the instrument was genuine, or would be so recognized by the owner" (emphasis added)). Put another way, "if one remains silent when it is his duty to speak, he will not be permitted to speak when in justice he should remain silent." *United Serv. Corp. v. Vi-An Constr. Corp.*, 77 So. 2d 800, 803–04 (Fla. 1955).

Although Appellant had retained counsel prior to the conveyance of the property by the Paganis to Appellee, he still took no action to protect his claim to the property. It

was not until 2017, after the sale to Appellee and after filing suit, that Appellant finally reported Suarez's alleged fraud to police and had his attorney file a lis pendens. Appellant's failure to act meant that when Appellee took title to the property, she lacked notice, either constructive or actual, of any alleged irregularities in the chain of title. As a "bona fide purchaser without notice of any alleged irregularities in the public record chain of title, . . . [Appellee] is protected from claims outside that chain of title." *Hardemon v. United Cos. Lending Corp.*, 746 So. 2d 1231, 1232 (Fla. 3d DCA 1999); *see also Nunes v. Allstate Inv. Props., Inc.*, 69 So. 3d 988, 991 (Fla. 4th DCA 2011) (finding that the appellee "was an innocent, *bona fide* purchaser of . . . real property for value" and that he "was the very person the public record was there to protect and the person to whom the [appellant] owed a duty"); § 695.01(1), Fla. Stat. (2014) ("No conveyance, transfer, or mortgage of real property . . . shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law . . . .").

Having carefully considered all of Appellant's arguments, we affirm the final summary judgment entered in favor of Appellee.

AFFIRMED.

ORFINGER and GROSSHANS, JJ., concur.