

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI DADE COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

U.S. BANK, N.A.,

CASE NO.: 2013-27149-CA

Plaintiff,

vs.

RICARDO RIVAS AND LIANA RIVAS,

et. al.

Defendants.

_____ /

**ORDER DECLARING THE FLORIDA FAIR FORECLOSURE STATUTE
AS CODIFIED AT FLA. STAT. §702.10(2) UNCONSTITUTIONAL**

THIS CAUSE having come before the Court on Plaintiff's Motion for Order to Show Cause pursuant to Fla. Stat. §702.10(2), the Court being otherwise advised in the premises, it is hereupon:

ORDERED AND ADJUDGED that:

1. Plaintiff filed this residential foreclosure action in August 19, 2013.
2. On April 3, 2018, Plaintiff filed a Motion for Order to Show Cause Why Rents Should not be Deposited in the Court Registry under Fla. Stat. §702.10(2).
3. The Show Cause Motion stated the property subject to this residential foreclosure is not presently owner occupied.
4. The note and mortgage Plaintiff have sued upon does not provide for the relief set forth in Fla. Stat. §702.10(2). There is no contractual right to demand monthly mortgage payments during these foreclosure proceedings or to obtain a writ of possession or final judgment¹ should Defendant fail to make those monthly mortgage payments.
5. The Court finds the language of Fla. Stat. §702.10(2) clearly reflects an intention by the legislature for the statute to have retroactive application.

¹ Here, Plaintiff's proposed order to show cause provided that "... Upon failure of Defendants to make payments to Plaintiff... [Plaintiff] shall be entitled to the entry of a final judgment of foreclosure...."

6. The Court finds the application of Fla. Stat. §702.10(2) to this case would provide Plaintiff substantive rights outside the contract between the parties, specifically the right to demand monthly mortgage payments and to obtain a writ of possession upon the failure to make such payments during this litigation.

7. This Court finds Fla. Stat. §702.10(2) significantly and unreasonably impairs the Defendant's contractual rights under the mortgage to use the property as he sees fit without having to pay monies during litigation.

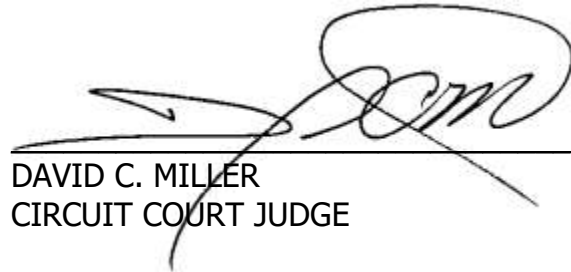
8. Then contract between the parties only requires the defendant/home owner to occupy the premises for the first three months of the term of the mortgage. The homeowner is free live in the property, rent it or otherwise use his property to generate income. In this case Defendant claims that if he couldn't use his property in a commercial manner without becoming subject to claims under Fla. Stat. §702.10(2), his ability to engage competent counsel to defend against a foreclosure claim would be effected.

9. Therefore, the Court finds the Florida Fair Foreclosure Statute as codified at Fla. Stat. §702.10(2) and as applied to this case, violates Article I, section 10 of the Florida Constitution expressly provides that: "No bill of attainder, ex post facto law ***or law impairing the obligation of contracts*** shall be passed." Fla. Const. Art. I, §10 (emphasis added).

10. Moreover, the Court finds the Florida Fair Foreclosure Statute as codified at Fla. Stat. §702.10(2) as applied to this case, violates Article III, §11(9) of the Florida Constitution prohibits any special law pertaining to "creation, enforcement, ***extension*** or impairment ***of liens based on private contracts***..." Fla. Const. art. III, § 11(9) (emphasis added).

11. The Court finds the Florida Fair Foreclosure Statute as codified at Fla. Stat. §702.10(2) unconstitutional as applied to this case, and denies Plaintiff's motion for order to show cause on those grounds in this case. *See generally, Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 782 (Fla. 1979). *Metropolitan Dade County v. Chase Federal Housing Corporation*, (737 So.2d 494 (Fla. 1999)), *Coventry First, LLC v. State, Office of Ins. Regulation* (30 So. 3d 552 (Fla. 1st DCA 2010)), *Pembroke Lakes Mall Ltd. v. McGruder*, 137 So.3d 418, 426 (Fla. 2014).

DONE AND ORDERED in Chambers at Miami-Dade County, Florida,
on 03/30/19.



DAVID C. MILLER
CIRCUIT COURT JUDGE

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Bailey's staff.
Copies furnished to:

Defendant's counsel:

Bruce Jacobs, Esq., Amida Umesh Frey, Esq., Anna C. Morales, Esq., Jacobs Legal, PLLC., 169 E. Flagler Street, Suite 1620, Miami, FL 33131

Plaintiff's counsel:

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