

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL ACTION

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE,
Plaintiff,

vs.

CASE NO.: 50-2008-CA-018381
DIVISION: AW

MICHAEL PETERS, et al,
Defendant(s).

MOTION TO RATIFY FINAL SUMMARY JUDGMENT
OF MORTGAGE FORECLOSURE NUNC PRO TUNC

COMES NOW Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE ("Plaintiff"), by and through the undersigned counsel and files this *Motion to Ratify Final Summary Judgment of Mortgage Foreclosure Nunc Pro* (the "Motion") and in support thereof states as follows:

BACKGROUND FACTS

1. On May 24, 2010 this Court entered a *Final Summary Judgment of Mortgage Foreclosure* in favor of Plaintiff. A judicial sale is scheduled for December 30, 2010.
2. The undersigned law firm has recently been advised that the information contained in the *Affidavit as to Amounts Due and Owing* submitted in support of Plaintiff's Motion for Summary Judgment may not have been properly verified by the affiant.
3. A Notice to this effect has been filed with the Court by the undersigned law firm.
4. Plaintiff has also submitted a new, properly verified affidavit by affiant which shows that the amounts reflecting the indebtedness contained in the original affidavit were accurate when filed. (The new, properly verified affidavit is attached hereto and incorporated by reference as Exhibit "A").
5. Based on the foregoing Plaintiff has sought to notify the Court of the foregoing verification issues and now seeks the ratification of the *Final Summary Judgment of Mortgage Foreclosure nunc pro tunc* as an additional reasonable remedial measure.
6. For the reason more fully set forth below, Plaintiff believes that entry of an Order granting this Motion in its entirety is appropriate.

MEMORANDUM OF LAW

7. Fla. R. Civ. P. 1.540(b) governs post-judgment relief from a final judgment and sets forth several different substantive theories upon which such a motion for relief could be predicated.
8. Amongst those substantive grounds enumerated is "fraud (whether heretofore denominated as intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party." (See Fla. R. Civ. P. 1.540(b)(3)).
9. A trial court has broad discretion in evaluating a Rule 1.540(b) motion seeking relief from final judgment. *Crowley v. Crowley*, 678 So. 2d 435, 438 (Fla. 4th DCA 1996). Under Florida law, the standard for granting



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relief pursuant to Rule 1.540(b)(3) is whether the asserted grounds prejudiced or "affected" the final judgment. See *Flemenbaum v. Flemenbaum*, 636 So. 2d 579 (Fla. 4th DCA 1994); *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co, Inc.*, 20 So. 3d 952, 954 (Fla. 4th DCA 2009). Recognizing that Rule 1.540(b)(3) motions sometimes "are attempts to rehash a matter fully explored at trial," the court in *Flemenbaum* noted that such a motion must do more than raise "de minimus matters which have no effect on the final judgment." *Flemenbaum*, 636 So. 2d at 580.

10. In *Coleman*, the court reiterated that conduct supporting a Rule 1.540(b)(3) motion "is subject to the *Flemenbaum* requirement to show the effect of the fraud on the final judgment." *Coleman*, 20 So. 3d at 958. Noting its consistency with Florida policy considerations, the court quoted, with approval, *Drobny v. Comm'r of Internal Revenue*, 113 F.3d 670, 678 (7th Cir. 1997):

We are of the opinion that the petitioners were required to demonstrate, not only that the respondent engage in conduct that was intended to mislead the court, **but-of paramount importance - that the actual conduct affected the outcome of their case**

Id. (Emphasis added). The court noted that "requiring a prejudicial effect on the outcome of a case" is consistent with "Florida policy considerations favoring the finality of judgments." *Id.*

11. Since the original affidavit of indebtedness in the instant case accurately stated the amount of debt owed to Plaintiff, Plaintiff respectfully submits that the lack of proper verification did not prejudice and had no effect on the *Final Summary Judgment of Mortgage Foreclosure* entered in this matter.

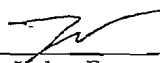
WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter an Order: (a) granting this Motion; (b) ratifying the *Final Summary Judgment of Mortgage Foreclosure nunc pro tunc* to May 24, 2010; and, (c) granting any and all such further relief as is appropriate or proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all parties listed on the attached service list on this 8th day of November, 2010.

Respectfully submitted,

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