IN DISTRICT COURT OF FLORIDA
SECOND DISTRICT

ERIC WALL,

Appellant,

vs.

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2013-IT, et al.

Appellees.
_____/

Case Number: 2D15-1925

L.T. Case Number: 11-CA-3117

APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE

Appellant, Eric Wall ("the Homeowner), responds to the Court's May 4, 2015 order to show cause and asserts that this appeal should not be dismissed for lack of jurisdiction because the final judgment signed on November 12, 2014 was not rendered final until April 1, 2015 when the lower court denied the Homeowner's motion for rehearing.

INTRODUCTION

This appeal arises from a final judgment of foreclosure signed on November 12, 2014 and entered in favor of U.S. Bank National Association, Not in its Individual Capacity, But Solely As Trustee For The RMAC Trust, Series 2013-IT ("the Bank").[1]

[1] Final Judgment of Foreclosure, November 12, 2014 (App. 1-5).

On November 26, 2014, fourteen days after the filing of the judgment, the Homeowner served a motion for rehearing made pursuant to Fla. R. Civ. P. 1.530.[2] This motion was not disposed of until April 1, 2015 when the trial court rendered its written order denying the motion.[3] The Homeowner then timely filed his notice of appeal on April 28, 2015.[4]

Thus, since the Homeowner's motion for rehearing tolled the time for rendition of the final judgment, and because the Homeowner's notice of appeal was filed within the applicable thirty day time period, this Court retains jurisdiction over the proceeding and the appeal should not be dismissed

ARGUMENT

- **The Homeowner's timely motion for rehearing tolled rendition of the final judgment until the motion was disposed of and therefore this Court has jurisdiction over the proceeding.**

A party may initiate an appeal from a final order by filing a notice of appeal within thirty days of rendition of the order. Fla. R. App. P. 9.110(b). And "[a]n order is rendered when a signed, written order is filed with the clerk of the lower tribunal." Fla. R. App. P. 9.020(i). However, rendition may be extended by the timely and authorized filing of certain enumerated motions, including a motion for rehearing. *Id*. Thus, the filing of a timely motion for rehearing under Fla. R. Civ.

[2] Defendant's Motion for Rehearing, November 26, 2014, (App. 6-17).
[3] Order Upon Defendant's Motion for Rehearing, April 1, 2015 (App. 18-19).
[4] Notice of Appeal, April 28, 2015 (App. 20-21).

P. 1.530 will toll rendition until the motion has either been withdrawn or resolved by the filing of a written order. Fla. R. App. P. 9.020(j); *Casto v. Casto*, 404 So. 2d 1046, 1047 (Fla. 1981) ("The filing of a timely motion for rehearing, however, suspends the rendition of the order.").[5]

Here, the Homeowner's motion for rehearing was served within 15 days of the filing of the judgment. This motion operated to toll rendition of the judgment until April 1, 2015 when the motion was resolved by the trial court's order denying it. And since the Homeowner's notice of appeal was filed within thirty days of rendition, this Court has jurisdiction over the appeal.

CONCLUSION

Based on the reasons and authorities cited in this motion, this Court should discharge the order to show cause.

[5] A motion for rehearing is considered timely if it is served within fifteen days of filing of the judgment. Fla. R. Civ. P. 1.530(b); *In re Amend. Fla. Rules Civ. Pro.*, 131 So. 3d 643, 651 (Fla. 2013) (extending time period for rehearing from ten days to fifteen days).

Dated: May 13, 2015

By:__s/ Michael P. Fuino ____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this May 13, 2015 to all parties on the attached service list. Service was by email to all parties not exempt from Rule 2.516 Fla. R. Jud. Admin. at the indicated email address on the service list, and by U.S. Mail to any other parties.

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