IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA
CASE NO: 2D13-5700

DENNIS J. CREADON, and
ARTHUR L. MILTIADES,

Appellants,

v. L.T. Case No.: 11-2009-CA-0990-0001-XX

THORNBURG MORTGAGE HOME
LOANS, INC., et al.

Appellees.
_____/

ON APPEAL FROM THE CIRCUIT COURT,
TWENTIETH JUDICIAL CIRCUIT, IN AND FOR
COLLIER COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE AND FACTS

A. Summary of pertinent proceedings

This case arises from a mortgage foreclosure proceeding filed in 2009 by Thornburg Mortgage Home Loans, Inc. ("Thornburg"). (R.1.) The complaint alleges two counts: (1) reestablishment of the promissory note; and (2) foreclosure of the property. (R.1-3.) The property owners, Dennis Creadon and Arthur Miltiades ("Owners"), filed an answer and affirmative defenses in response to Thornburg's complaint. (R.32-33.) Thereafter, Thornburg filed a motion for summary judgment on the foreclosure count. (R.39-40.) After filing the motion, Thornburg filed what it alleged was the original note, original mortgage, and original proof of publication with the trial court on December 28, 2009. (R.63-101.) Owners opposed the motion for summary judgment. (R.111-113.) In early 2010, the magistrate judge recommended that the motion for summary judgment be denied without prejudice, which the trial court approved. (R.122-24.)

Thereafter, nothing of substance took place in the case until July 2013, when the trial court issued a Notice of Lack of Prosecution. (R.128.) In response, US Bank N.A. as Successor Trustee for Bank of America as Trustee for Thornburg Mortgage Securities Trust 2007-3 ("US Bank") filed a Notice of Status. (*Id*.) The Notice of Status represented that the complaint was being amended to change the name of the plaintiff from Thornburg to US Bank, and to drop the reestablishment

of lost note claim. (*Id.*) As Owners pointed out in their reply to the Notice of Status, US Bank did not file anything indicating that it had authority to act for Thornburg or showing any connection to the case. (R.131.) The trial court found that good cause had been shown for the lack of record activity and set the case for trial on November 6, 2013. (R.133.)

On the day of trial, Plaintiff's counsel made an oral motion to substitute US Bank for Thornburg. (R.318.) Counsel electronically filed a written motion to substitute after the trial had been in progress for nearly an hour. (*Cf.* R.214 *with* R.315.) Owners objected, noting that Plaintiff's counsel had never amended the complaint, as US Bank had represented in the Notice of Status. (R.318-19.) Owners were prepared to try the case on the original pleadings and were prejudiced because they did not know if US Bank was actually the holder of the note and mortgage. (R.318-19.) Discovery had closed before trial, in October, 2013. (R.319.) Owners also objected because they were entitled to notice and a hearing on the motion to substitute. (*Id.*) Finding a lack of prejudice, the trial court granted the motion to substitute. (R.320, 218.) The new plaintiff became US Bank, N.A. as successor trustee for Bank of America as trustee for Thornburg Mortgage Securities Trust 2007-3. (*Id*.)

Following the seventy-minute bench trial (R.315), the trial court entered a judgment for US Bank for $806,308.17 and set a statutory sale date. (R.364-65,

220-22.) This timely appeal followed. (R.224-25.) Together with filing the notice of appeal, Owners moved for an emergency stay of the foreclosure sale. (R.231-36.) The trial court granted the stay conditioned upon the Owners posting an $800,000 bond. (R.312.) Owners moved this Court to review the stay order. *See* Motion filed 12/17/13. This Court disapproved the trial court's order and imposed a stay without the requirement of a bond pending certain events, none of which have yet occurred. *See* Order dated 1/9/14.

B. Facts pertinent to asserted trial errors

US Bank called only one witness, Raymond Crawford, an employee of the loan servicer. (R.321.) Mr. Crawford testified based upon a power of attorney from Bank of America, N.A., who had purportedly purchased the Thornburg security through bankruptcy. (R.327; R.208-12.) Mr. Crawford explained that the servicing company gets a power of attorney any time it establishes a new relationship with a client. (R.330.) The power of attorney was executed July 1, 2010. (R.213.) However, Mr. Crawford did not offer any evidence that a bankruptcy court had approved Bank of America's alleged purchase of the note and mortgage from Thornburg's bankruptcy estate. (R.331.) Mr. Crawford also did not explain how US Bank purportedly became the successor trustee for Bank of America, or whether he had a limited power of attorney authorizing him to act for US Bank (the newly-named Plaintiff).

In the course of its case-in-chief, Plaintiff's counsel asked the trial court to take judicial notice that the original note and mortgage had been filed with the court. (R.331.) The trial court agreed to do so. (*Id.*) Counsel admitted that the copy of the note he wanted to mark into evidence differed from the original in the court file. (*Id.*) While the original note contained a blank indorsement, the copy did not. (*Id.*; *cf.* R.143 *with* R.71.) Although Plaintiff's counsel "could not obtain a copy that had a blank endorsement [sic]" (R.331), Mr. Crawford testified that he was familiar with the note in the original court file and that note did contain a blank indorsement (R.334).

On cross-examination, Mr. Crawford testified that "Bank of America and the trustee" (presumably US Bank) were the holders of the note because they purchased it through Thornburg's bankruptcy. (R.339-40.) He did not know when that transaction closed. (R.340.) In fact, the only reason Mr. Crawford believed that the transaction closed was because his servicing company obtained a power of attorney from Bank of America. (R.341, 348.) Mr. Crawford admitted that the note and mortgage were not referenced anywhere in the power of attorney. (R.341-42.) He was asked to identify the evidence in the record showing that US Bank, as successor trustee for Bank of America as trustee for Thornburg Mortgage Securities Trust 2007-3, was the current holder of the note. (R.344.) According to Mr. Crawford, Thornburg executed an assignment in favor of US Bank. (*Id.*) US

Bank never moved the alleged assignment into evidence, however. Mr. Crawford did not recall seeing the alleged assignment from Thornburg to US Bank when he reviewed the file. (R.357-58.) When asked whether he had any documentary evidence that Thornburg transferred or negotiated the note to US Bank, Mr. Crawford responded that he did not. (R.353.)

At the close of US Bank's case, Owners moved for a directed verdict.[1] (R.359.) Owners' counsel argued that "there's absolutely no evidence in this record that -- that the current plaintiff that was substituted today, without notice, is the current holder of the note or the mortgage at issue for this foreclosure." (*Id*.) Accordingly, Owners argued there was no basis to enter judgment. (R.360.) In response, US Bank indicated that it was not relying on an assignment, but upon the blank indorsement on the note that was in the court file. (R.360-61.) The trial court denied the motion for involuntary dismissal, opining that US Bank had presented a prima facie case. (R.361.)

During closing arguments, US Bank's counsel again argued that the original note had a blank indorsement, which entitled US Bank to enforce the note. (R.363.) Owners' counsel incorporated his prior argument. (*Id.*) The trial court thereafter

[1] A motion for directed verdict under Florida Rule of Civil Procedure 1.480 is the jury trial equivalent to a motion for involuntary dismissal under Florida Rule of Civil Procedure 1.420(b) in a non-jury trial. The same law is applicable to both motions. *See Day v. Amini*, 550 So. 2d 169, 171 (Fla. 2d DCA 1989).

entered a final judgment of foreclosure for US Bank in the amount of $806,308.17. (R.220-22.)

SUMMARY OF ARGUMENT

The trial court made two errors that require reversal. First, the trial court erred in entering judgment for US Bank where there was no proof that US Bank was the owner or holder of the note. Second, and alternatively, the trial court erred in granting US Bank's motion to substitute parties at the start of the trial. If the Court finds that the trial court erred as a matter of law on the first issue, it need not consider the second issue on appeal.

On the first issue, US Bank relied exclusively on the fact that the original note, placed into the court file by Thornburg, contained a blank indorsement. US Bank claimed that because the note was indorsed in blank, it had the right to enforce the note. The critical distinction missed by both US Bank and the trial court is that a party must be in possession of a note indorsed in blank in order to enforce it. US Bank never came into possession of the note because it was placed into the court file by Thornburg. Possession of a note indorsed in blank is an obvious requirement to enforcement; otherwise, anyone could come into court and claim to be a new party entitled to enforce the note. Because US Bank never possessed the original note, it needed to prove its ownership through an assignment or other legal document. US Bank offered no evidence of such an assignment.

Accordingly, the trial court erred as a matter of law in denying Owners' motion for involuntary dismissal and entering a foreclosure judgment against Owners, and in favor of US Bank. The Court should reverse and remand with directions to enter judgment for Owners.

On the second issue, the trial court erred in substituting US Bank for Thornburg because Owners never received notice of the substitution and were prejudiced. As an initial matter, Florida Rule of Civil Procedure 1.260 requires a motion for substitution to be served with notice of the hearing. Owners never received the motion before trial and no hearing was ever noticed. As to the prejudice, Owners were prepared to try the case as framed by the pleadings. The substitution raised new issues for which Owners were unprepared. Moreover, absent proof that US Bank is entitled to enforce the note, Owners may be subject to future, successive claims by a party who actually does own and hold the note. This error requires reversal and remand for a new trial.

ARGUMENT ON THE APPEAL

I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN CONCLUDING THAT US BANK COULD ENFORCE A NOTE, INDORSED IN BLANK, WHICH US BANK NEVER POSSESSED.

Standard of Review. The question of whether a plaintiff presented legally sufficient evidence to support its claim is one of law, requiring this Court to exercise *de novo* review. *See Allard v. Al-Nayem Int'l, Inc.*, 59 So. 3d 198, 201

(Fla. 2d DCA 2011) (reviewing decision on motion for involuntary dismissal under de novo review); *In re Estate of Sterile,* 902 So. 2d 915, 921 (Fla. 2d DCA 2005) (trial court's conclusions based upon legal error are reviewed de novo).

Argument. "'The party seeking foreclosure must present evidence that it owns and holds the note and mortgage to establish standing to proceed with a foreclosure action.'" *Stone v. BankUnited,* 115 So. 3d 411, 413 (Fla. 2d DCA 2013) (quoting *Mazine v. M & I Bank,* 67 So. 3d 1129, 1131 (Fla. 1st DCA 2011)). Because the mortgage follows the note, a party must prove ownership of the note to foreclose on a mortgage. *See id*. A note is a negotiable instrument. *See* § 673.1041(1), (5), Fla. Stat. (2013). A note may be enforced by: (1) the holder of the note; (2) a nonholder in possession of the note who has the rights of a holder; or (3) a person not in possession but who is entitled to enforce the instrument. *See* § 673.3011, Fla. Stat. (2013). The "holder" is the "person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." § 671.201(21)(a), Fla. Stat. (2013).

To be negotiated, a note payable to the bearer may be negotiated by possession alone. *See* § 673.2011(2), Fla. Stat. (2013). "If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a 'blank indorsement.' When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." §

673.2051(2), Fla. Stat. (2013). Thus, possession of an original promissory note, indorsed in blank, is sufficient to establish that the holder is entitled to enforce the terms of the note. *Focht v. Wells Fargo Bank, N.A.*, 124 So. 3d 308, 310 (Fla. 2d DCA 2013) ("To establish standing as the holder of a note endorsed in blank, a party must be in possession of the original note."); *see also Riggs v. Aurora Loan Servs., LLC*, 36 So. 3d 932, 933 (Fla. 4th DCA 2010) (possession of note indorsed in blank entitled holder to enforce it).

Here, *Thornburg* filed the original note in December 2009. (R1.63-74.) At some point thereafter, Bank of America purportedly purchased the note from Thornburg's bankruptcy estate, and at some point after that, US Bank purportedly became the successor trustee to Bank of America. (R.327, 344.) Physical possession of the note could never have transferred from Thornburg to Bank of America to US Bank because the original note remained in the court file, *as filed there by Thornburg*.

Further, there is no record evidence to establish that US Bank became the holder of the note by possession.[2] The limited power of attorney, which authorized Mr. Crawford to act for Bank of America, was dated July 1, 2010 – more than six

[2] The reason why possession is required to negotiate an instrument indorsed in blank is to preclude attempted enforcement by a stranger to the note. *See Focht*, 124 So. 3d at 312 (Altenbernd, J., concurring). Indeed, because the note is in the court file, *any* third party could claim to be entitled to enforce the note if the blank indorsement was sufficient to confer standing on the party so claiming.

months after Thornburg filed the original note. (R.349.) Logically, the note could not have been negotiated from Bank of America to a successor trustee before then, or there would have been no reason for *Bank of America* to execute a limited power of attorney. By the time US Bank purportedly came to be the holder of the note, the original note had already been in the court file for at least several months. As argued repeatedly by counsel for Owners, there is simply no evidence in the record that US Bank currently holds the note. (R.359.)[3]

Because the note could not have been negotiated to US Bank by possession, US Bank needed to do more than rely on the blank-indorsed note to establish it was the holder. US Bank needed to establish its right to foreclose the mortgage, either through "a valid assignment, proof of purchase of the debt, or evidence of an effective transfer." *BAC Funding Consortium Inc. ISAOA/ATIMA v. Jean-Jacques*, 28 So. 3d 936, 939 (Fla. 2d DCA 2010). This Court's *BAC Funding* opinion, although decided in the context of a summary judgment, is instructive. *Id.* at 937. There, US Bank, acting as trustee, filed a mortgage foreclosure action. *Id.* The documents attached to US Bank's complaint did not identify it as the lender or

[3] This lack of physical transfer is further highlighted by the fact that Mr. Crawford did not have an accurate copy of the note containing the blank indorsement in his records to provide to his counsel. (R.331.) Had Thornburg negotiated the note to Bank of America, who then negotiated it to US Bank, by virtue of transferring possession of the original, then US Bank should have had a copy of the note bearing a blank indorsement. Mr. Crawford would not have had to review the court file to find evidence of the blank indorsement. (R.334.)

mortgagee. *Id.* Despite BAC's defense of lack of standing, US Bank moved for summary judgment without filing the purported assignment that gave it standing to foreclose. *Id.* The trial court, nonetheless, granted summary judgment for US Bank. *Id.*

Because the exhibits did not show that US Bank had standing to foreclose the mortgage as a matter of law, this Court concluded that summary judgment was premature. *Id.* at 938. The Court noted US Bank's failure to produce an "assignment or any other evidence to establish that it had purchased the note and mortgage." *Id.* "Further, it did not file any supporting affidavits or deposition testimony to establish that it owns and holds the note and mortgage." *Id.* at 938-39. Accordingly, US Bank did not prove its standing to foreclose the note and mortgage. *Id.* at 939.

Likewise, US Bank did not offer any evidence here that it had standing to enforce the note and mortgage. US Bank did not offer an assignment into evidence. Although Mr. Crawford testified that US Bank received an assignment *from Thornburg* (an implausible proposition if Bank of America purchased the note from Thornburg's bankruptcy estate), he could not recall having seen any such assignment in the files. (R.358.) Further, Mr. Crawford testified that both Bank of America *and* the trustee (presumably US Bank) hold the note, contradicting US Bank's claim that it is the sole holder. (R.339-40.) Finally, US Bank offered no

evidence or testimony to support the proposition that US Bank is the successor trustee for Bank of America.[4] US Bank did not offer any testimony about how it purportedly came to be the successor trustee to Bank of America, let alone that it had any interest in the note. US Bank failed to establish its standing to foreclose. *See Gee v. U.S. Bank Nat'l Ass'n,* 72 So. 3d 211, 213-14 (Fla. 5th DCA 2011) (US Bank's failure to prove every link in the chain of possession meant it failed to prove standing to foreclose as a matter of law).

Even going back a step farther in the alleged chain of title, US Bank did not offer any approval from a bankruptcy court to substantiate that Bank of America purchased the note from Thornburg's bankruptcy estate. (R.331.) Mr. Crawford's testimony that Bank of America must have purchased the note because his servicing company received a power of attorney from (and has a relationship with) Bank of America is nothing more than assumption and speculation. (R.341, 348.) Indeed, the power of attorney did not reference the note and mortgage at issue in this case. (R.341-42.) Mr. Crawford's assumptions about who owned the note lack any basis in supported fact or personal knowledge. His testimony constitutes an impermissible stacking of inferences. *See Estate of Githens v. Bon Secours-Maria*

[4] If, in fact, US Bank is the successor trustee, Mr. Crawford offered no evidence that he was authorized to act for US Bank at the trial because the limited power of attorney was given by Bank of America, not US Bank. (R.208.)

Manor Nursing Care Ctr., 928 So. 2d 1272, 1274 (Fla. 2d DCA 2006) (citing *Nielsen v. City of Sarasota*, 117 So. 2d 731, 733 (Fla. 1960)).

Mr. Crawford simply inferred that Bank of America must have purchased the note because his employer received a power of attorney. (R.341, 348.) He then left the court to infer, without any testimony to support the inference, that Bank of America assigned its interest to US Bank, as the alleged successor trustee. Mr. Crawford's own testimony was contradictory, stating on the one hand that Thornburg assigned its interest to US Bank (R.344), and on the other hand that Bank of America and the trustee purchased the note from Thornburg's bankruptcy estate (R.339-40). Most tellingly, when asked whether he had any documentary evidence that Thornburg transferred the note to US Bank, Mr. Crawford responded that he did not. (R.353.) There simply was no record evidence to substantiate that Bank of America was entitled to enforce the note, let alone that US Bank, as a successor to Bank of America, was entitled to enforce the note.

As the plaintiff in the action, US Bank unquestionably had the burden of proof on all elements of its claim, including its standing to foreclose. *See McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 173 (Fla. 4th DCA 2012) ("A crucial element in any mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose."). Because US Bank failed to offer any evidence supporting its contention that it holds the

note, US Bank has failed to establish its entitlement to foreclose on the mortgage as a matter of law – just as in *BAC Funding*.

Accordingly, this Court should reverse the final judgment of foreclosure. On remand, the trial court should grant an involuntary dismissal of the complaint and render judgment in favor of Owners. *See Correa v. U.S. Bank Nat'l Ass'n*, 118 So. 3d 952 (Fla. 2d DCA 2013) (where US Bank failed to offer sufficient proof of its claim, this Court reversed and remanded with directions for the trial court to enter an involuntary dismissal of the complaint). Having failed to prove its case, US Bank should not be given another "bite at the apple." *Correa*, 118 So. 3d at 956 (finding that "'appellate courts do not generally provide parties with an opportunity to retry their case upon a failure of proof'") (quoting *Morton's of Chi., Inc. v. Lira*, 48 So. 3d 76, 80 (Fla. 1st DCA 2010)).

II. THE TRIAL COURT ERRED IN GRANTING THE MOTION TO SUBSTITUTE PARTIES AT THE TRIAL BECAUSE OF THE LACK OF NOTICE AND THE PREJUDICE TO OWNERS.

Standard of Review. This issue presents a mixed standard of review. As to the lack of notice, the Court reviews the trial court's construction of the Florida Rules of Civil Procedure *de novo*. *Schaeffler v. Deych*, 38 So. 3d 796, 799 (Fla. 4th DCA 2010). On the question of prejudice, this Court reviews a trial court's decision to permit or refuse an amendment under an abuse of discretion standard. *Mathis v. Coats*, 24 So. 3d 1284, 1289 (Fla. 2d DCA 2010). A party should not be

permitted to amend its pleading where the amendment would cause prejudice to the opposing party. *Id.*

Argument. If this Court agrees that the trial court erred in entering judgment for US Bank as a matter of law (as argued in section I, *supra*), it need not reach this issue. However, and in an abundance of caution, Owners would show that the trial court also erred as a matter of law and abused its discretion by allowing US Bank to be substituted as the plaintiff, without notice, at the start of trial.

When the trial began, Plaintiff's counsel represented to the trial court (without proof) that US Bank – as opposed to the plaintiff Thornburg – was the party entitled to enforce the note and mortgage. (R.319-20.) Plaintiff's counsel orally moved to substitute US Bank for Thornburg. (*Id.*) The written motion for substitution was electronically filed nearly an hour *after* the trial had already begun. (*Cf.* R.214 *with* R.315.) Owners objected to the substitution because they had not been given notice and a hearing on the motion. (R.319.) Plaintiff's counsel was required to serve the motion for substitution on Owners "together with the notice of hearing." Fla. R. Civ. P. 1.260(a), (c). Plaintiff's counsel never noticed its motion for hearing, instead raising the matter orally, without notice, at the start of trial. Where the civil procedure rules require notice and a hearing, a trial court errs in granting an oral motion, without notice, made at the start of trial. *See Schaeffler v. Deych*, 38 So. 3d at 801 (rule requires service of the motion with a notice of

hearing); *Casa Linda Tile & Marble Installers, Inc. v. Highlands Place 1981, Ltd.*, 642 So. 2d 766, 769 (Fla. 4th DCA 1994) (reversing order substituting plaintiff for lack of notice); *see also Lazar v. Allen*, 347 So. 2d 457, 458 (Fla. 2d DCA 1977) (error to grant summary judgment at start of trial where rules require notice before a hearing). Thus, on *de novo* review, this Court should conclude that US Bank was improperly substituted as plaintiff, in violation of Rule 1.260, and reverse and remand for a new trial.

The trial court also abused its discretion by permitting the substitution, over objection, because of the resulting prejudice to Owners. Florida Rule of Civil Procedure 1.260(c) provides that "[i]n 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." Owners objected to US Bank's substitution as the plaintiff. (R.319.) Owners had no way of knowing whether US Bank actually was entitled to enforce the note and mortgage (R.320), but were prepared to try the case as pled in the complaint (R.319). The trial court did not believe that any prejudice to Owners would result. (R.319-20.)

The trial judge's ruling was an abuse of discretion. It is well-established that the "'issues in a cause are made solely by the pleadings . . . .'" *Terra Firma Holdings v. Fairwinds Credit Union*, 15 So. 3d 885, 886 (Fla. 2d DCA 2009)

(quoting *Hart Props., Inc. v. Slack*, 159 So. 2d 236, 239 (Fla. 1963)). Here, the operative complaint alleged that Thornburg was the owner of a lost note. (R.1.) The complaint also alleged that Thornburg sought to foreclose on the mortgage. (R.1-2.) Although plaintiff's counsel represented on August 22 that she would amend the complaint, no amendment was ever filed before the November 6 trial. (R.128.)

The last-minute substitution of US Bank for Thornburg prejudiced Owners in two ways. First, Owners were prepared to defend the case as originally pled, not as amended. (R.319.) The last-minute substitution changed Owners' strategies and defenses, as evidenced by the numerous questions raised at trial as to US Bank's standing (or lack thereof) to foreclose. (*See* R.348-53, 356-59.) Any possible defenses that Owners had been prepared to raise as to Thornburg were no longer relevant.

Second, and relatedly, Owners did not have time to investigate whether US Bank was entitled to enforce the note and mortgage. (R.320.) Owners complained before trial that there was no evidence to link US Bank to this action. (R.130-31.) Given US Bank's failure to amend the complaint before trial, Owners were left to believe that US Bank had abandoned its efforts to substitute as a party plaintiff. When US Bank belatedly sought permission to substitute as plaintiff at the start of trial, Owners again objected. (R.320.) By that time, discovery had closed and the

trial had begun. (R.319-20.) Again, the late substitution prejudiced Owners. Absent proof that US Bank is in fact entitled to enforce the note, Owners may be subject to a later judgment by the actual holder of the note.

Given the prejudice that the last-minute substitution caused, the trial court abused its discretion in granting Thornburg's motion to substitute US Bank as the party plaintiff. The trial court also erred as a matter of law in substituting US Bank as the plaintiff without providing Owners with notice and hearing as required by Rule 1.260. This Court should reverse both the order granting the substitution and the final judgment.

CONCLUSION

This Court should reverse the final judgment of foreclosure and remand with directions to the trial court to grant an involuntary dismissal of the complaint and judgment for Owners. Alternatively, should the Court find that the trial court erred only in allowing the last-minute substitution of US Bank, Owners ask this Court to reverse the order granting the substitution, together with the final judgment, and remand for a new trial.

Respectfully submitted,
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I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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