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Lanson v. Reid, Case No. 3D18-2616 (Fla. 3d DCA 2019).
An order dismissing a complaint with prejudice is a final, appealable order. A motion under Florida Rule of Civil Procedure 1.540 seeking to vacate the final judgment tolls neither rendition of, nor the time to, appeal the order of dismissal.

Schwartz v. Bank of America, N.A., Case No. 4D17-3457 (Fla. 4th DCA 2019).
Failure to submit evidence in opposition to a lender's claim that, under Florida Statute section 673.3081, signatures on a negotiable instrument are presumed valid entitles lender to summary judgment.

Delta Aggregate, LLC v. Hermes Hialeah Warehouse, LLC, Case No. 4D18-2252 (Fla. 4th DCA 2019).
Equitable liens can support a lis pendens, so long as they are based on a duly recorded instrument or there exists a "fair nexus" between the property that is the subject of the lis pendens and the dispute embodied in the lawsuit. Additionally, the Fourth District sets forth the differences between the district courts of Florida in their treatment of appellate review of orders deciding whether to discharge a lis pendens.

Third District Court of Appeal

State of Florida

Opinion filed March 6, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2616
Lower Tribunal No. 06-9516

Meryl M. Lanson, et al.,
Appellants,

vs.

Justus W. Reid, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Mary Alice Gwynn, P.A., and Mary Alice Gwynn (Delray Beach), for appellant Baron's Stores, Inc.; Meryl M. Lanson, in proper person.

Boyd Richards Parker & Colonnelli, P.L., and Frank Colonnelli, Jr., and Craig J. Shankman, for appellees.

Before EMAS, C.J., and LINDSEY, and HENDON, JJ.

LINDSEY, J.

ON MOTION TO DISMISS

Appellees, Justus W. Reid; Justus W. Reid, P.A.; Peter Bernhardt; and Reid, Metzger, & Bernhardt, P.A., move to dismiss this appeal of a final order dismissing Appellants', Meryl Lanson; the Estate of Norman Lanson;[1] and Baron's Stores, Inc., Amended Complaint with prejudice.[2] Because the notice of appeal was untimely filed, we grant the motion to dismiss for lack of jurisdiction.

The trial court dismissed the Amended Complaint on March 27, 2017. Appellants did not seek rehearing and did not file a notice of appeal within 30 days. The notice of appeal was not filed until December 21, 2018, more than 20 months after rendition of the dismissal order. It was only after the trial court denied rehearing as to the Appellees' award of attorneys' fees that Appellants filed the notice of appeal. As the notice of appeal was not filed within the original 30-day period, the Appellees filed a motion to dismiss this appeal as untimely. However, according to Appellants' response to the motion to dismiss, Appellants timely filed a motion to vacate the judgment on October 11, 2017 alleging the

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[1] Meryl Lanson is acting individually and as the personal representative of the Estate of Norman Lanson.

[2] The Appellees sought dismissal only as to the appeal of the March 27, 2017 Final Order of Dismissal. Appellees did not move to dismiss the other two orders being appealed regarding attorneys' fees. The Appellees also seek clarification as to Appellant Meryl Lanson's ability to proceed pro se in her role as the personal representative of the Estate of Norman Lanson without establishing that she is also the sole interest in the estate. We decline to address the Motion for Clarification without prejudice to Appellees' ability to raise that issue in the trial court.

dismissal order was void as it was obtained through fraud on the court. See Fla. R. Civ. P. 1.540(b) ("The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than a 1 year . . . ."). Appellants argue in their response that the dismissal order was not a final, appealable order because the trial court's failure to rule on the motion to vacate suggests additional judicial labor. Appellants' argument is incorrect.

It is well-established that an order dismissing a complaint with prejudice is a final, appealable order. See GMI, LLC v. Asociacion del Futbol Argentino, 174 So. 3d 500 (Fla. 3d DCA 2015). A motion seeking to vacate a final judgment does not change the order's finality. See Fla. R. Civ. P. 1.540(b) ("A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation."). Nor does it suspend rendition of the final order. See Fla. R. App. P. 9.020(h)(1).

Only the narrow list of motions under Florida Rule of Appellate Procedure 9.020(h)(1) postpone rendition of a final order and toll the time for filing a notice of appeal. By their own admission, Appellants did not file any such motion within 15 days. See Fla. R. of Civ. P. 1.530(b) ("A motion for . . . rehearing shall be served not later than 15 days."). Accordingly, Appellants were required to file a notice of appeal within 30 days of dismissal to invoke this Court's jurisdiction.

See Fla. R. App. P. 9.110(b). They failed to do so. As such, the notice of appeal was untimely.

Because this Court lacks jurisdiction to review the order dismissing Appellants' complaint, we grant Appellees' motion to dismiss the appeal as untimely without prejudice to Appellants to seek a ruling from the trial court – if it has not already ruled – on their October 11, 2017 motion to vacate for fraud on the court. See Falkner v. Amerifirst Fed. Sav. And Loan Ass'n, 467 So. 2d 746 (Fla. 3d DCA 1985) (citing Griffin v. Tauber-Manon Assocs., Inc., 452 So. 2d 577 (Fla. 3d DCA 1984)).

Dismissed.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

AMY B. SCHWARTZ and **JAY F. SCHWARTZ,**
Appellants,

v.

BANK OF AMERICA, N.A., successor by merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, L.P., **BRIAR BAY COMMUNITY ASSOCIATION, INC.,** and **WATERS EDGE AT BRIAR BAY ASSOCIATION, INC.,**
Appellees.

No. 4D17-3457

[March 6, 2019]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; David E. French, Judge; L.T. Case No. 502012CA001369XXXXMB.

Bruce Jacobs of Jacobs Legal, PLLC, Miami, for appellants.

Adam J. Wick of Liebler Gonzalez & Portuondo, Miami, for appellee Bank of America, N.A.

PER CURIAM.

We affirm the final summary judgment of foreclosure. The appellants contend that discovery was outstanding and material issues of fact remained on their claim of fraud on behalf of the appellee's predecessor, Bank of America, in the fixation of an endorsement to the promissory note. They contended that the endorsement was added after the original holder of the note, Countrywide Home Loans, Inc., was dissolved; thus, the appellee lacked standing to enforce the note. The appellee relied on section 673.3081, Florida Statutes (2012), to establish its standing, which provides for presumption of authenticity and authority of signatures on secured instruments, shifting to the party opposing the validity of the note the burden to offer some showing to negate the presumption. *See Bennett v. Deutsche Bank Nat'l Tr. Co.*, 124 So. 3d 320 (Fla. 4th DCA 2013). No affidavits or any other type of evidence was timely submitted to counter

the appellee's motion for summary judgment. Therefore, the presumption was never rebutted, and summary judgment was properly entered.

Additionally, appellants also claim that the court erred in entering judgment when appellee had repeatedly violated discovery orders, and because discovery was not complete. First, the trial court made no findings that appellee violated any discovery orders. To the contrary, the court found that appellants had failed to comply with discovery. Secondly, the discovery about which appellants complained was still outstanding at the summary judgment hearing, but it had been propounded only days prior to the hearing. The hearing had been pending for several months in the case, which had been filed in 2012. The court determined that the appellants had not diligently conducted discovery, and it denied a motion for continuance. No abuse of discretion has been shown.

Affirmed as to all issues raised.

WARNER, DAMOORGIAN and LEVINE, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DELTA AGGREGATE, LLC, a Florida limited liability company, and **MICHAEL DESIMONE,** a Florida resident,
Petitioners,

v.

HERMES HIALEAH WAREHOUSE, LLC, a Florida limited liability company,
Respondent.

No. 4D18-2252

[March 6, 2019]

Petition for writ of certiorari to the Seventeenth Judicial Circuit, Broward County; Michael L. Gates, Judge; L.T. Case No. CACE 17-013283 (12).

Robert A. Sweetapple and Cynthia J. Miller of Sweetapple, Broeker & Varkas, P.L., Boca Raton, for petitioners.

Paul DeCailly of DeCailly Law Group, P.A., Indian Rocks Beach, for respondent.

PER CURIAM.

Petitioners, Delta Aggregate, LLC (Delta) and Michael DeSimone (DeSimone), seek certiorari review of an order that denied their emergency motion to discharge a lis pendens. We have jurisdiction and grant the petition.[1]

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[1] This court exercises certiorari review over such orders. *See Kennedy Real Estate Found. v. Goldberg,* 436 So. 2d 1056 (Fla. 4th DCA 1983); *Cooper Vill., Inc. v. Moretti,* 383 So. 2d 705 (Fla. 4th DCA 1980); *see also Archer v. Archer,* 692 So. 2d 1009 (Fla. 4th DCA 1997). The third district exercises non-final review but has recognized that certiorari review is more appropriate. *See Villamizar v. Luna Capital Partners, LLC.,* 260 So. 3d 355 (Fla. 3d DCA 2018); *see also Rodriguez v. Guerra*, 254 So. 3d 521, 521 n.1 (Fla. 3d DCA 2018) (recognizing that prior decisions indicated that certiorari was appropriate to review such orders); *Bankers Lending Servs., Inc. v. Regents Park Inv., LLC,* 225 So. 3d 884, 885 (Fla. 3d DCA 2017) (noting that prior non-final review was based on Rule

While a claim for an equitable lien can support a lis pendens, it must be founded either upon a duly recorded instrument or a fair nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit. *See Chiusolo v. Kennedy*, 614 So. 2d 491, 492 (Fla. 1993); *Lakeview Townhomes at the Calif. Club, Inc. v. Lakeview of the Calif. Club Homeowners Ass'n, Inc.*, 579 So. 2d 290 (Fla. 3d DCA 1991). Respondent Hermes Hialeah Warehouse, LLC (Hermes) has not demonstrated either basis to support the lis pendens.

Delta operates a mining operation on real property that it owns. Delta's interests were originally held equally between DeSimone and Raelaur Realty LLC (Raelaur). DeSimone sought to purchase Raelaur's fifty percent interest in Delta. To facilitate the transaction, DeSimone executed a promissory note for the full purchase price in Raelaur's favor. As collateral to secure the note, DeSimone also executed a security agreement for 100% of his membership interest in Delta.

Raelaur received partial payment on the note and then declared DeSimone in default. The parties thereafter entered into a loan modification in which Delta was joined as a party. Under the terms of the loan modification, Delta was to pay Raelaur monthly, specified amounts of the revenue realized from the sale of sand and stone excavated from the property. Raelaur alleges that it was never paid any money nor provided an accounting from Delta under the modification agreement.

Raelaur later assigned its interest under the loan documents and modification agreement to Hermes. Hermes sued Delta and DeSimone for breach of contract and fraud. It filed a lis pendens which the trial court discharged.

Hermes amended the complaint to add a third count to impose an equitable or constructive lien on the real property, and filed the second lis pendens under review. Hermes alleged that Delta and DeSimone failed to make the payments due from its sales revenue. Therefore, it sought an

9.130(a)(3)(B), associated with injunctions). This court in *Archer* agreed with the third district that non-final review would be the preferred method of review but noted that Florida Rule of Appellate Procedure 9.130 did not authorize it and urged the appellate rules committee to consider the issue. 692 So. 2d at 1009 n.1. The first district may decline review. *Landmark at Crescent Ridge LP v. Everest Fin., Inc.,* 219 So. 3d 218, 220 (Fla. 1st DCA 2017) (dismissing petition and holding that monetary harm that may result from a lis pendens, such as loss of value or ability to sell to a particular buyer, is insufficient to allow for certiorari review).

equitable or constructive lien on the real property and the materials embedded therein.

In order to maintain a lis pendens not based on a duly recorded instrument or lien, the proponent must show a "fair nexus" between the property that is the subject of the lis pendens and the dispute embodied in the lawsuit. *Chiusolo,* 614 So. 2d at 492. The amended complaint with its claim for equitable or constructive lien does not show the requisite "fair nexus." Rather, it is based solely on Delta's failure to pay those sums claimed to be due from the sale of the excavated materials as provided by the terms of the loan modification agreement. *See Roger Homes Corp. v. Persant Constr. Co.*, 637 So. 2d 5, 6-7 (Fla. 3d DCA 1994). Delta did not grant Hermes, as Raelaur's successor, an interest in or a lien against the property. *Hansen v. Five Points Guar. Bank*, 362 So. 2d 962, 964 (Fla. 1st DCA 1978) ("An equitable lien results . . . only when the intention to offer the land as security for the debt is clearly apparent.") (citation and internal quotation marks omitted). Furthermore, Hermes can obtain complete relief without reference to the property. *Blue Star Palms, LLC v. LED Tr., LLC*, 128 So. 3d 36, 39 (Fla. 3d DCA 2012) (holding that lis pendens could not be maintained where the plaintiff can be afforded complete relief without reference or connection to the property's title).

Based on the foregoing, we grant the petition and quash the order that denied the motion to discharge the lis pendens.

Petition for writ of certiorari granted and order quashed.

GERBER, C.J., GROSS and FORST, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.