

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2018-CA-002317-XXXX-MB

WALTER E. SAHM and  
PATRICIA SAHM

Plaintiffs,

v.

BERNSTEIN FAMILY REALTY, LLC,  
BRIAN O'CONNELL, AS SUCCESSOR  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF SIMON L. BERNSTEIN;  
ALEXANDRA BERNSTEIN, ERIC BERNSTEIN,  
MICHAEL BERNSTEIN, MOLLY SIMON,  
PAMELA B. SIMON, JILL IANTONI,  
MAX FRIEDSTEIN, LISA FRIEDSTEIN,  
INDIVIDUALLY AND TRUSTEES OF  
THE SIMON L. BERNSTEIN REVOCABLE  
TRUST AGREEMENT DATED MAY 20, 2008,  
AS AMENDED AND RESTATED;  
ELIOT BERNSTEIN, AND CANDICE  
BERNSTEIN, INDIVIDUALLY AND AS  
NATURAL GUARDIANS OF MINOR  
CHILDREN JO., JA. AND D. BERNSTEIN;  
AND ALL UNKNOWN TENANTS.

Defendants.

**MOTION FOR SUMMARY FINAL JUDGMENT OF FORECLOSURE, TAXATION OF  
COSTS, AND AWARD OF ATTORNEYS' FEES**

Plaintiffs, WALTER E. SAHM and PATRICIA SAHM, by and through their undersigned  
counsel, pursuant to Rule 1.510, Fla. R. Civ. P., moves for the entry of Summary Final Judgment  
of Foreclosure in its favor and against the above Defendants (collectively "Defendants"), on the

grounds that the pleadings and other matters of record demonstrate that there is no genuine issue of material fact and Walter E. Sahm and Patricia Sahm are entitled to judgment as a matter of law.

In further support thereof, Plaintiffs' provide as follows:

1. This is an action seeking to foreclose a mortgage on real property located in Palm Beach County, Florida.
2. There is no material issue of law or fact in this cause and Plaintiff is entitled to entry of a Summary Final Judgment of Foreclosure in its favor as a matter of law.
3. Plaintiffs are well aware that there is a current moratorium in place concerning the removal of tenants post-foreclosure.
4. Plaintiffs do not seek for tenants to be removed now. Instead, Plaintiffs seek a Summary Judgment on this issue, now, and will defer removal of the tenant(s) until after the moratorium is lifted, per State guidelines.
5. Service of process has been perfected upon the DEFENDANTS herein.
6. The lien of the Plaintiff's mortgage takes priority over any subsequent claims or liens attaching to the property through the mortgagors, their successors, assigns and tenants. *Bancflorida v. Haywardd*, 689 So.2nd 1052 (Fla. 1997).
7. Plaintiff is the Mortgagee, the owner, or the holder in due course, of the original note and mortgage and as such has standing to foreclose on the subject note and mortgage. *WM Specialty Mortgage, LLC v. Salomon*, 889 So.2d 922 (Fla. 4th DCA 2004).
8. The provisions of the note and mortgage being sued upon in this action confer upon Plaintiff the right to accelerate all sums due thereunder upon the default thereof, and

- the right to foreclose all interests in the encumbered property which are inferior to the lien of said mortgage. *Hubbard v. Highland Realty & Inv. Co.*, 156 So. 322 (Fla.1934); *Campbell v. Werner*, 232 So.2d 252 (Fla. 3rd DCA 1970). The provisions of said note and mortgage also provide for an award of attorney's fees to Plaintiff in the event of the filing of an action for foreclosure.
9. As a matter of law, the entire indebtedness secured by the mortgage is now due and collectible.
  10. The pleadings and exhibits filed herein, all of which are incorporated by reference establish that Plaintiff is entitled to judgment as a matter of law, including but not limited to Affidavit of Indebtedness together with Business Records.
  11. The allegations in Defendants' Answer, if any, have not been supported by evidence; nor have Defendants alleged any facts which would present a triable issue of fact. All of the Defendants' Affirmative Defenses, if any, fail because none are pled with the required factual specificity. Certainty is required when pleading defenses, and pleading ultimate conclusions of law unsupported by allegations of the underlying fact is legally insufficient, see *Cady v. Chevy Chase Savings and Loan*, 528 So.2d 136, (Fla 4th DCA 1988). Moreover, the Defendants have attached no documents to their pleadings to support their averments of defenses. The defenses alleged, if any, are mere conclusions unsupported by ultimate facts. As such they are legally insufficient and do not create any material issues of fact.
  12. Further, Plaintiffs request that this Court award interest on the expenses incurred by the mortgage in addition to interest in the unpaid principal and late charges accrued up to

the date that the promissory note was accelerated. *Amos Fowler & Amylene, Inc. v. First Federal Savings & Loan Association of Defuniak Springs*, 19 FLW D1962 (Fla. 1<sup>st</sup> DCA 1994).

**WHEREFORE**, Plaintiffs, WALTER SAHM and PATRICIA SAHM, move this Honorable Court for the entry of a Summary Final Judgment of Foreclosure, adjudicating the amount due Plaintiffs on account of said note and mortgage, directing that the subject premises be sold to satisfy said Judgment of Foreclosure and for such further relief the Court deems just.

Respectfully submitted,

SWEETAPPLE, BROEKER & VARKAS, PL  
4800 N Federal Hwy, Suite D306  
Boca Raton, Florida 33431  
Telephone: (561) 392-1230  
E-Mail: pleadings@sweetapplelaw.com

By: /S/ Robert A. Sweetapple  
**ROBERT A. SWEETAPPLE**  
Florida Bar No. 0296988  
**NAOMI ALZATE**  
Florida Bar No. 112822

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via the E-Filing Portal this 5<sup>th</sup> day of August, 2021 to: Eliot Ivan Bernstein, 2753 NW 34<sup>th</sup> St., Boca Raton, FL 33434, (iviewit@iviewit.tv); Brian O'Connell, Esq., and Ashley Crispin Ackal, Esq., O'Connell & Crispin, PLLC, 420 Royal Palm Way, Palm Beach, FL 33480 (boconnell@ocalawyers.com; acrispinackal@ocalawyers.com); Cary P. Sabol, Esq., Law Offices of Cary P. Sabol, P.O. Box 15981, West Palm Beach, Florida 33416 CSabol@sabollaw.com; Alan B. Rose, Esq., Mrachek-law, Fitzgerald & Rose, PL; and Arose@Mrachek-law.com.

By: /S/ Robert A. Sweetapple  
ROBERT A. SWEETAPPLE  
Florida Bar No. 0296988  
NAOMI ALZATE  
Florida Bar No. 112822

NOT A CERTIFIED COPY