

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JANICE M. RISCH,)
)
Appellant,)
)
v.)
)
BANK OF AMERICA, NATIONAL)
ASSOCIATION, AS SUCCESSOR BY)
MERGER TO LASALLE BANK, N.A. AS)
TRUSTEE FOR ZUNI 2006-OA1,)
)
Appellee.)
_____)

Case No. 2D10-4882

Opinion filed August 3, 2011.

Appeal pursuant to Fla. R. App. P. 9.130
from the Circuit Court for Lee County; Hugh
E. Starnes, Senior Judge.

Bradley S. Donnelly of Treiser Collins,
Naples, for Appellant.

Jeffrey T. Kuntz and Thomas H. Loffredo of
Gray Robinson, P.A., Fort Lauderdale, for
Appellee.

BLACK, Judge.

Janice M. Risch appeals the trial court's denial of her emergency motion
for rehearing or, in the alternative, for relief from judgment pursuant to Florida Rule of

Civil Procedure 1.540. The record shows that the trial court conducted a hearing on Ms. Risch's motion; however, there was no evidence presented. Since Ms. Risch's motion asserted allegations of misrepresentation, which might give rise to relief pursuant to rule 1.540(b)(3), and since she attached an affidavit and records which could support her claim, we reverse and remand for an evidentiary hearing. See S. Bell Tel. & Tel. Co. v. Welden, 483 So. 2d 487, 489 (Fla. 1st DCA 1986) ("[W]here the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required."); see also Rosenthal v. Ford, 443 So. 2d 1077, 1078 (Fla. 2d DCA 1984) ("The credibility of appellant's allegations should only be determined by the trial court after an evidentiary hearing thereon.").

Reversed and remanded.

SILBERMAN, C.J., and DAVIS, J., Concur.