

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

THOMAS and MICHELLE DEBISH,
Appellants,

v.

**WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF
REGISTERED HOLDERS OF FIRST FRANKLIN MORTGAGE LOAN
TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-
FF6,**
Appellee.

No. 4D17-469

[March 14, 2018]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St.
Lucie County; Robert E. Belanger, Judge; L.T. Case No. 2014CA002540.

W. Trent Steele of Steele Law, Hobe Sound, for appellants.

Nicholas Agnello and Erica Gomer of Burr & Forman LLP, Fort
Lauderdale, for appellee.

PER CURIAM.

The borrowers, Thomas and Michelle Debish, appeal an Amended Final Judgment of Foreclosure. We affirm without discussion as to the borrowers' argument that the plaintiff failed to prove its standing to enforce the lost note. However, because the trial court reestablished the lost note without finding that the borrowers were adequately protected against loss that might occur due to a claim by another person to enforce the lost note, we reverse and remand with directions for the trial court to amend the judgment so as to provide adequate protection to the borrowers. *See Blitch v. Freedom Mortg. Corp.*, 185 So. 3d 645, 646–47 (Fla. 2d DCA 2016); § 673.3091(2), Fla. Stat. (2017).

“Because the court’s consideration of the issue of adequate protection is a condition of entering a judgment that reestablishes a lost note, its failure to provide adequate protection, or to make a finding that none is needed under the circumstances, requires reversal and remand for the court to consider the issue.” *Blitch*, 185 So. 3d at 646. As noted in *Blitch*,

the requirement of adequate protection is generally satisfied “through a written indemnification agreement in the final judgment, the posting of a surety bond, a letter of credit, a deposit of cash collateral with the court, or ‘[s]uch other security as the court may deem appropriate under the circumstances.’” *Id.* (quoting § 702.11(1)(e), Fla. Stat. (2014)).

Affirmed in part, Reversed in part, and Remanded for further proceedings.

TAYLOR, MAY and DAMOORGIAN, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.