

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**JACOB FRANCOIS,**  
Appellant,

v.

**LIBRARY SQUARE ASSOCIATION, INC.,**  
Appellee.

No. 4D17-2694

[July 11, 2018]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Martin J. Bidwill, Judge; L.T. Case No. CACE-16-001715(05).

Jacob Francois, Port St. Lucie, pro se.

Joseph B. Lancos of Tripp Scott, P.A., Fort Lauderdale, for appellee.

PER CURIAM.

The trial court erred when it denied the defendant's motion to set aside the foreclosure sale. We vacate the sale and remand.

Following entry of final judgment of foreclosure, the defendant filed a timely motion for rehearing. While his motion for rehearing was pending, the clerk of court enforced the final judgment by conducting a foreclosure auction and selling the property to the highest bidder (a third party). The defendant's subsequent motion to set aside the sale was denied.

While a motion for rehearing is pending, the trial court retains "complete control of its decree with the power to alter or change it . . . ." *State ex rel. Owens v. Pearson*, 156 So. 2d 4, 7 (Fla. 1963). For this reason, it is well settled that "enforcement of a final judgment is suspended" by the filing of a timely motion for rehearing. *944 CWELT-2007 LLC v. Bank of Am., N.A.*, 194 So. 3d 470, 471 (Fla. 3d DCA 2016).

Here, the foreclosure sale must be set aside because it was conducted while the defendant's timely motion for rehearing directed at the

foreclosure judgment was pending. *See, e.g., Diaz v. U.S. Bank, N.A.*, 239 So. 3d 151, 152 (Fla. 3d DCA 2018).

The defendant also appeals the trial court's eventual denial of his motion for rehearing. We affirm the denial of his motion for rehearing and reverse only the order denying his motion to set aside the sale for the reasons stated. We vacate the foreclosure sale and remand for the court to begin the sale process anew. *See Hoffman v. BankUnited, N.A.*, 137 So. 3d 1039 (Mem) (Fla. 2d DCA 2014).

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

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***Not final until disposition of timely filed motion for rehearing.***