

# Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed December 21, 2011.

Not final until disposition of timely filed motion for rehearing.

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No. 3D10-3084

Lower Tribunal No. 06-18983

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**Novastar Mortgage, Inc.,**  
Appellant,

vs.

**Oscar Vargas, et al.**  
Appellees.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Gisela Cardonne Ely, Judge.

Krinzman, Huss & Lubetsky, and Cary A. Lubetsky and Aniella Gonzalez; Popkin & Rosaler and Brian L. Rosaler (Deerfield Beach), for appellant.

Rawny Garay, for appellees.

Before RAMIREZ, SHEPHERD, and SUAREZ, JJ.

SHEPHERD, J.

On the authority of Carnero v. National Home Mortgage Corp., 941 So. 2d 395, 395-96 (Fla. 3d DCA 2006), we reverse the nonfinal order granting the foreclosure defendants' emergency motion to set aside summary judgment pursuant to Florida Rule of Civil Procedure 1.540(b) because, as in Carnero, "the motion seeking relief under this rule was unsworn as to the claim of excusable neglect and there was no sworn evidence of excusable negligence otherwise adduced at the hearing below."

Reversed and remanded with directions to reinstate the final summary judgment of foreclosure and for further proceedings in compliance therewith.