

Third District Court of Appeal

State of Florida

Opinion filed March 2, 2016.

No. 3D15-1518
Lower Tribunal No. 11-38239

Ibeth Y. Prieto and George Prieto,
Appellants,

vs.

Federal National Mortgage Association,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Monica Gordo,
Judge.

Robert Flavell, for appellants.

Choice Legal Group, P.A., and Wm. David Newman, Jr. (Fort Lauderdale),
for appellee.

Before SALTER, LOGUE, and SCALES, JJ.

ON CONFESSION OF ERROR

LOGUE, J.

In this foreclosure case, the borrowers appeal the post-judgment order denying their motion to vacate the foreclosure sale. The property was sold to the lender while the borrowers' timely motion for rehearing of the judgment was pending. Based on the lender's commendable confession of error, we agree that the foreclosure sale must be set aside. See Wollman v. Levy, 489 So. 2d 1239 (Fla. 3d DCA 1986) ("Once a timely motion for rehearing is made, the operation of the judgment is suspended until the motion is disposed of. [The borrowers] timely moved for a rehearing; therefore, the sale of the property should not have been carried out until the motion had been acted upon.") (internal citations omitted); Hoffman v. Bank United, N.A., 137 So. 3d 1039 (Fla. 2d DCA 2014) ("[W]e agree that the foreclosure sale of the property must be set aside because the sale was conducted while [the borrower's] timely motion for rehearing was pending.").

Reversed and remanded.