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# Locke Lord QuickStudy: Colorable Entitlement: Third District of Florida Confirms That an Evidentiary Hearing Is Not Required to Deny a Motion to Vacate Final Judgment

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On September 15, 2021, Locke Lord obtained an opinion in Florida's Third District Court of Appeal matter affirming the denial of a motion to vacate a final judgment of foreclosure. In affirming the denial, the Third District Court of Appeal reiterated that a movant is not entitled to an evidentiary hearing on a motion for relief from judgment where the movant fails to "demonstrate a prima facie case of fraud."

In *Azran Miami 2, LLC v. U.S. Bank Trust, N.A.*, Case No. 3D20-1712 (Fla. 3d DCA, September 15, 2021), the Third District Court of Appeal considered whether it was improper to deny a borrower's motion to vacate a final judgment under Fla. R. Civ. P. 1.540(3) without holding an evidentiary hearing. After denying oral argument, the Third District affirmed the trial court's denial and confirmed binding precedent that requires that a movant alleging fraud "demonstrate a prima facie case of fraud, not just nibble at the edges of the concept." (quoting *Hembd v. Dauria*, 859 So. 2d 1238, 1240 (Fla. 4th DCA 2003)).

The Court also cited to *Rusniaczek v. Tableau Fine Art Grp., Inc.*, 139 So. 2d 355, 357-58 (Fla. 3d DCA 2014) which explained that requiring specificity in a motion for relief from judgment allows trial courts to make a determination whether there is a "prima facie showing which would justify relief from judgment" and confirm that the motion "is not merely rehashing matters explored at trial."

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**Impact: A borrower cannot delay the enforcement of a valid final judgment by filing a legally insufficient motion for relief from final judgment.**

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This opinion is a strong reminder to borrowers and their counsel to avoid filing dilatory motions to vacate. It has become routine for litigious borrowers and their counsel to seek to prolong foreclosure proceedings by filing unsupported post-judgment motions alleging newly discovered fraud on the court. Not requiring an evidentiary hearing where a borrower does show colorable entitlement, or where they simply re-argue issues already decided at trial, allows Banks and Loan Servicers to quickly resolve frivolous motions that could otherwise delay enforcement of valid final judgments. ?

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