

2019 WL 4806149

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District Court of Appeal of Florida, Second District.

Mack D. LEWIS, Appellant,

v.

**INNOVA INVESTMENT GROUP,  
LLC**, and Shareese Lewis, Appellees.

Case No. 2D18-2116

Opinion filed October 2, 2019

#### Synopsis

**Background:** Mortgagee brought foreclosure action against mortgagor. The Circuit Court, 10th Judicial Circuit, Polk County, [Steven L. Selph, J.](#), entered final summary judgment of foreclosure in favor of mortgagee. Mortgagor appealed.

The District Court of Appeal, [Atkinson, J.](#), held that mortgagor was judicially estopped from contesting foreclosure judgment.

Appeal dismissed.

Appeal from the Circuit Court for Polk County; [Steven L. Selph](#), Judge.

#### Attorneys and Law Firms

[James N. Charles](#) of Law Office [James N. Charles](#), Celebration, for Appellant.

[Matthew Estevez](#) of Matthew Estevez, P.A., Doral, for Appellee Innova Investment Group, LLC.

No appearance for Appellee Shareese Lewis.

#### Opinion

[ATKINSON](#), Judge.

\*1 Mack D. Lewis appeals the Final Summary Judgment of Foreclosure entered in favor of Innova Investment Group, LLC (Innova). On the day before the foreclosure sale, Mr. Lewis filed a petition in United States Bankruptcy Court, Middle District of Florida, under chapter 7 of the bankruptcy code. After issuing an order to show cause, we took judicial notice of the statement of intentions and the order of discharge entered in Mr. Lewis' bankruptcy case. In the statement of intentions, Mr. Lewis elected to surrender the subject property. Innova contends that Mr. Lewis is estopped from challenging the foreclosure judgment because he agreed to surrender the subject property in his bankruptcy case. We agree and dismiss the appeal as moot.

Borrowers, like Mr. Lewis, who have surrendered real estate in their bankruptcy cases, cannot subsequently contest a mortgage foreclosure action involving that property. [See, e.g., Sayles v. Nationstar Mortg., LLC](#), 268 So. 3d 723, 727 (Fla. 4th DCA 2018) (holding that the borrower was judicially estopped from contesting standing in the foreclosure action because Sayles surrendered the property in her bankruptcy case); [Clay Cty. Land Tr. v. HSBC Bank USA, N.A.](#), 219 So. 3d 1015, 1016 (Fla. 1st DCA 2017) (concluding that after stipulating to the surrender of the properties in the bankruptcy proceeding, the land trust was estopped from challenging the foreclosure); [see also In re Failla](#), 838 F.3d 1170, 1178 (11th Cir. 2016) (“Because the Faillas filed a statement of intention to surrender their house, they cannot contest the foreclosure action.”); [In re Metzler](#), 530 B.R. 894, 899 (Bankr. M.D. Fla. 2015) (“[T]his [c]ourt concludes that relinquishing property and making it available to the secured creditor—i.e., ‘surrendering’ the property—means not taking an overt act to prevent the secured creditor from foreclosing its interest in the secured property.”).

This court recently found error in the application of the doctrine of judicial estoppel to prohibit a defendant from raising a standing defense when judicially noticed documents did “not reflect ... the surrender of the ... property.” [Fischer v. HSBC Bank USA, Nat'l Ass'n for Deutsche Alt-A Sec., Inc., Mortg. Loan Tr., Series 2006-AR1](#), 257 So. 3d 512, 515 (Fla. 2d DCA 2018). But unlike the debtor in [Fischer](#), Mr. Lewis clearly and unambiguously declared in his statement of intentions his election to surrender the subject property. [See Sayles](#), 268 So. 3d at 727 (“Unlike [Fischer](#), however, there is no uncertainty of the property's surrender in this case.”). As a result, Mr. Lewis is judicially estopped from contesting the foreclosure judgment, thereby rendering this appeal moot. [See Clay Cty.](#), 219 So. 3d at 1016 (holding that an appeal from

a foreclosure judgment was moot after the parties entered into a stipulation in the land trust's bankruptcy case providing for the surrender of all interest in the subject properties); [Rivera v. Bank of Am., N.A. ex rel. BAC Home Loans Servicing, L.P.](#), 190 So. 3d 267, 267 (Fla. 5th DCA 2016) (dismissing a foreclosure appeal where the debtor had admitted in his bankruptcy case that “he owed a non-contingent, undisputed mortgage debt to Appellee, and he surrendered the mortgaged property to Appellee”).

\*2 Dismissed.

[NORTHCUTT](#) and [SILBERMAN, JJ.](#), Concur.

**All Citations**

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