

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

U.S. BANK TRUST NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY BUT  
SOLELY AS OWNER TRUSTEE FOR RCF 2  
ACQUISITION TRUST C/O U.S. BANK TRUST  
NATIONAL ASSOCIATION

Plaintiff,

Case No.: 502023CA016201 XXXAMB

V.

CHERANE PEFLEY,

Defendant.

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**DEFENDANT'S, CHERANE PEFLEY, MEMORANDUM IN OPPOSITION TO THE**

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Defendant, CHERANE PEFLEY, by and through the undersigned counsel and pursuant to Rule 1.510, Fla. R. Civ. P., and does file this, her Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, and would show unto the Court the following:

**I. INTRODUCTION**

A decade after the entry of the Amended Final Judgment, Plaintiff desperately seeks to avoid the prior determinations of Circuit Judge Susan R Lubitz and the Fourth District Court of Appeals that Plaintiff's predecessor and Defendant agreed to monthly mortgage payments of \$2,506.07, this was not for one payment but the term, Plaintiff refused multiple payments from

Defendant under this agreement between the Parties, and as a result it would, “it would be unconscionable to render a verdict in favor of the Plaintiff.”

Plaintiff seeks to have the case retried with this Court to substitute its judgment for that of Circuit Judge Susan R Lubitz and the Fourth District Court of Appeals on a judgment resultant from a trial with the announced intention of using this case as a stepping stone to remove the eighty-three (83) year old, nearly blind birdkeeper, and her birds, from their home. Plaintiff seeks to remove the word Final from every Final Judgment entered in this great state of Florida.

The relief sought is not allowed under the declaratory relief statute and is barred by the principles of res judicata and collateral estoppel. Further, as a result of the dispute to be resolved being as to the language in the Amended Final Judgment not the mortgage and note, it being sought almost a decade after the Amended Final Judgment, and the action being one for declaratory relief not foreclosure, is time-barred.

Defendant, CHERANE PEFLEY, respectfully requests that this Honorable Court deny Plaintiff’s Motion for Summary Judgment, dismiss the declaratory action with prejudice, and grant such other relief as this Court deems just and proper.

## **II. ARGUMENT**

### **A. Standard of Review**

The Florida Supreme Court *sua sponte* amended Rule-1.510 Fla. R. Civ. P., Inc. May 1, 2021, and adopted the summary judgment standard articulated by the United States Supreme Court in Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). Accordingly, a moving party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c)(2). A dispute of material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *See Anderson*, 477 U.S. at 248. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id* at 249-50. It is the directed verdict standard.

B. Action Barred by the Statute of Limitations for Declaratory Relief as the Compliant Could have been Brought the day the 2014 Judgment was Entered.

This matter can be resolved on the simplest of grounds - the statute of limitations - without wading into any other issues relating to the propriety of the declaratory action. Hollywood Lakes Section Civic Ass'n v. City of Hollywood, 676 So. 2d 500, 501 (Fla. 4th DCA 1996). A claim for declaratory relief accrues when a dispute arises creating "a bona fide, actual, present practical need for the declaration." Ryan v. Lobo De Gonzalez, 921 So. 2d 572, 578-79 (Fla. 2005) (*quoting Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla.1994)) (claim for declaratory relief accrued when ownership of corporate shares was **FIRST DISPUTED**).

Assuming for the sake of argument that the elements for declaratory relief are satisfied, every element necessary for Plaintiff to assert a declaratory relief claim was present on May 22, 2014, the day that the Order which Plaintiff seeks this Court’s guidance on was entered. City of Hollywood, 921 So 2d at 501. Plaintiff’s position that that the statute of limitations would start anew upon every default under the note fails to assert the very claim it asserted: a claim for declaratory judgment. The issue is not whether the elements of an alternative cause of action arising out of a document are met for purposes of the statute of limitations, but is there a dispute as to the terms of a document. To the extent there was a dispute, based upon the dispute alleged

in the Complaint, it was created on the date of the entry of the Amended Final Judgment, not with every default under the note. This is a declaratory action, not a foreclosure action.

In City of Hollywood, the Appellants, Hollywood Lakes Section Civic Association, Inc., and Brion Blackwelder, challenged the dismissal of their amended complaint with prejudice. The suit, “challenged the 1981 judgment realigning the property as violative of the city's 1955 Charter, which required an ordinance and possibly a referendum before public property could be sold.” Id. The suit also sought determinations regarding the 1994 deed and the 1994 amendment to the 1981 judgment being violative of the 1984 charter. Id. In both instances, despite their being deeds and charters with different dates that related to the matter, the statute of limitations was determined on the documents that declaratory relief was sought under, the judgments.

“Litigation regarding this property commenced in 1972 between Avatar and the city. Id. at 501. “In 1974, the parties reached a settlement, which was approved by the court in a final judgment.” Id. The property was transferred by warranty deed on September 18, 1975 from Avatar to the city and subsequently dedicated for public use as parks. Id. “The judgment was amended in 1981 following an agreement between the parties that realigned one of the parcels.” Id. The 1981 judgment was amended again in 1994, followed by the execution of a special warranty deed the same year that transferred a portion of the property from the City to Avatar. Id.

The Fourth DCA ruled that the statute of limitations barred recovery on relief sought on the 1981 judgment but not the 1994 judgment and 1994 deed, although res judicata did bar recovery under the 1994 judgment, as the complaint was not filed within the four-years of entry of the 1981 judgment. Id. The present lawsuit was not filed within four (4) years of the judgment upon which Plaintiff seeks declaratory relief so the same result is called for, dismissal of the action for failure to file within the statute of limitations.

"A cause of action accrues when the last element constituting the cause of action occurs." § 95.031(1), Fla. Stat. **"Put another way, the limitations period begins to run when the action 'may be brought.'"** City of Rivera Beach v. Reed, 987 So. 2d 168, 170 (Fla. 4th DCA 2008) (*citing* State Farm Mut. Auto. Ins. Co. v. Lee, 678 So. 2d 818, 821 (Fla. 1996)). Once the "legal ability" to bring a claim arises, the statute of limitations begins to run. Id. Limiting the discussion to timing, Plaintiff could have, and should have, brought the present declaratory action on the day the judgment was entered in 2014.

Every Florida case that has interpreted the statute of limitations as it relates to declaratory actions has applied the four-year limitations period of § 95.11(3)(o) or its predecessor cite. See e.g. Hollywood Lakes Section Civic Ass'n, Inc., 676 So. 2d at 501. *See also* e.g. Paresky v. Miami-Dade County Bd. of County Com 'rs, 893 So. 2d 664, 665 (Fla. 3d DCA 2005) (applying four-year statute of limitations to declaratory action); Milan Inv. Group, Inc. v. City of Miami, 50 So. 3d 662 (Fla. 3d DCA 2010) (same); Hardey v. Shell, 144 So. 3d 668, 672 (Fla. 2d DCA 2014) (referencing four-year statute of limitations to declaratory action). In light of Florida's uncontroverted precedent, the Compliant must be dismissed, as it was a count for declaratory relief that was filed more than four years after the date of accrual of Plaintiff's right of action, then entry of the amended judgment in 2014.

C. Three Times Plaintiff's Predecessor Sought a Determination of Amounts Due under the Mortgage and Note in Prior Litigation. Res Judicata Prevents Plaintiff from Seeking a Determination of Amounts Due under the Mortgage and Note in this Litigation.

Plaintiff asserts that, "pursuant to Singleton v. Greymar Assocs., 882 So. 2d 1004, 1006-1007 (Fla. 2004 ), res judicata does not apply because each monthly installment payment that comes due on the Loan creates a new and distinct cause of action for a declaratory judgment as to

the effect of the Judgment on the amount of the installment payment” and “[b]ecause each installment payment creates a new cause of action, and additional installment payments have come due on the Loan since the filing and adjudication of the Foreclosure Action, the instant case does not share identity of a cause of action with the Foreclosure Action.” Memo, pg. 12. Plaintiff further asserts that each new default on an installment creates a new cause of action.

Plaintiff’s position that its claim would run upon every default fails to assert the very claim it asserted: a claim for declaratory judgment.

Plaintiff erroneously relies on the following authority in support of its position:

- Bartram v. U.S. Bank, Nat’l Ass’n, 211 So. 3d 1009, 1014 (Fla. 2016) - Involves a procedural dismissal, not a trial on the merits. Addresses the statute of limitations as to mortgage foreclosures and not declaratory actions.
- Singleton v. Greymar Assocs., 882 So. 2d 1004, 1005 (Fla. 2004)<sup>1</sup> - Involves a procedural dismissal, not a trial on the merits. Addresses the statute of limitations as to mortgage foreclosures and not declaratory actions. Further opines, “When a second and separate action for foreclosure is sought for a default that involves a separate period of default from the one alleged in the first action, the case is not necessarily barred by res judicata.” Id. The present case is a declaratory action and even if a foreclosure, the rule on the impact of suit on a new default, as opined to Singelton, is not absolute.
- Barakat v. Broward Cty. Hous. Auth., 771 So. 2d 1193, 1194 (Fla. 4th DCA 2000) – Unconscionability is not raised as an affirmative defense and is thus not able to be used to rewrite the contract. Unconscionability was raised as a defense in the underlying litigation and is able to do so, as the trial and appellate court determined. Is an improper and misplaced attempt to attack prior court’s rewriting of the contract and does not deal with a declaratory action.
- Ribaya v. Bd. of Trs. of the City Pension Fund for Firefighters & Police Officers, 162 So. 3d 348, 350 (Fla. 2d DCA 2015) – Deals with a declaratory action in the context of the Sunshine Law. “The standard of review of an order dismissing an action for declaratory

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<sup>1</sup> Star Funding Solutions, LLC v. Kronde, 101 So. 3d 403, 403 (Fla. 4th DCA 2012) just incorporates Singelton without any factual analysis. Stands for the proposition.

judgment is somewhat different in the context of a Sunshine Law challenge.” Id. Unique standard for Sunshine Law review not applicable in the present case.

- Palm AFC Holdings, Inc. v. Palm Beach Cty., 807 So. 2d 703, 704 (Fla. 4th DCA 2002) – Plaintiff previously sued two parties, a prior decision was entered as against one, and Plaintiff sought recovery against the other, and as such the identity of parties test failed. In the present case, the Plaintiff is the successor in interest and Defendant is the same Defendant so the identities of parties test is satisfied.
- Burns v. DaimlerChrysler Corp., 914 So. 2d 451, 452 (Fla. 4th DCA 2005) – If the prior adjudicative body cannot hear the new suit and award the relief allowed under the new suit, then res judicata does not apply. In Burns, it was an arbitration board and a trial court while in the present matter it is a trial court and a trial court.
- Bullock v. Bayview Loan Servicing, LLC, 276 So. 3d 100, 102 (Fla. 1st DCA 2019) – Failure to prove a prior default does not bar subsequent foreclosure action. Not address declaratory action. Same issues as Star Funding.
- White v. Brousseau, 566 So. 2d 832, 833 (Fla. 5th DCA 1990) – A quiet title action.

On April 8, 2014, a final judgment in favor of Defendant’s affirmative defense of unclean hands was entered in favor of Defendant. **See SOF 13.** On April 18, 2014, Plaintiff’s purported predecessor-in-interest- filed a Verified Motion for Rehearing that was set for hearing. **See Exhibit 1 – Order Specially Setting Hearing on Plaintiff’s Motion for Rehearing.** The hearing on the Motion for Rehearing took place and the Court entered the Amended Final Judgment. **SOF 13.** The difference between the Amended Final Judgment and the Final Judgment is: (1) in Final Judgment provided in its findings of fact and law that Plaintiff prevented Defendant from complying with the terms of the Loan and hand unclean hands; and, (2) in the Amended Final Judgment the Court found that the predecessor in interest of the Plaintiff prevented Defendant from complying with the terms of the Loan and hand unclean hands. **See Composite Exhibit 2 - Final Judgment and Amended Final Judgment.**

The Fourth DCA did not agree with the argument of Plaintiff's predecessor in interest that the finding, of the trial court, judgment for a monthly payment of \$2,506.07, was too uncertain and ambiguous, and per curiam affirmed the decision of the trial court. **Exhibit 4 – Per Curiam Affirm** The unsuccessful arguments in the Initial Brief are almost the mirror image of the arguments of Plaintiff in the present litigation as to the ambiguity of the Amended Final Judgment. More specifically, the appellate court affirmed the trial court's decision that Plaintiff's predecessor refused to accept payments, not payment, of \$2,506.07 a month. **Exhibit 3 –Initial Brief.**

To avoid this determination, Plaintiff attempts to argue that the Court cannot rewrite a contract. In doing so, Plaintiff improperly relies upon Barakat v. Broward Cty. Hous. Auth., 771 So. 2d 1193, 1194 (Fla. 4th DCA 2000) and Prestige Valet, Inc. v. Mendel, 14 So. 3d 282, 283 (Fla. 2d DCA 2009), however, neither of these cases are in the context of unclean hands and the trial court did not create a contract, it found the parties had amended the old one and that the Plaintiff's predecessor in interests conduct in relation thereto warranted a finding of unclean hands. Further, it must be noted that the affirmative defense six was not only styled as a claim in unclean hands but "Fraud, Unclean Hands and Breach of Contract." **Exhibit 5 – Affirmative Defenses**

Plaintiff's predecessor referenced "unclean hands" 29 times in its appellate brief. **Exhibit 3 –Initial Brief.** Plaintiff's predecessor further raised the inadequacy of a mere breach of contract to warrant a finding of unclean hands. "To sum up the problem with the trial court's amended final judgment, the law is clear that a mere breach of contract falls well short of what is necessary to justify barring the courthouse door on the basis of unclean hands." **Exhibit 3 –Initial Brief..** The trial court found both an agreement and circumstances warranting a finding of unclean hands, Plaintiff is just unhappy with the result and seeks a FOURTH bite at the apple. (Trial, Rehearing, Appel, Present Action)

Plaintiff engages in this conduct despite it being a basic principle of Florida law that litigation must be brought to an end so that the parties and the public at large may rely on a decision as "final and dispositive of the rights and issues involved therein." Molinas Del S.A. v. E. I. DuPont de Nemours and Co., 947 So.2d 521, 524 (Fla. 4th DCA 2007)(quoting, Fla. Power Corp. v. Garcia, 780 So.2d 34, 44 (Fla. 2001)). **“Importantly, the doctrine of res judicata not only bars issues that were raised, but it also precludes consideration of issues that could have been raised but were not raised in the first case.”** Fla. DOT v. Juliano, 801 So. 2d 101, 105 (Fla. 2001)(internal citations omitted)(emphasis added). Plaintiff, and its predecessors, could have sought clarification, reconsideration or for rehearing and did seek rehearing of the Original Final Judgment under Rule 1.530, the Motion was heard, and the Amended Final Judgment was entered thereafter.

In addition to the above, it is fundamental that a final judgment that is regular on its face cannot be collaterally attacked when entered by a court having jurisdiction of the subject matter and the parties. Goldfarb v. J.A. Cantor Assoc., Inc., 123 So.2d 50, 51 (Fla. 3d DCA 1960). Nor is the declaratory judgment statute, Ch. 86, Fla. Stat., a substitute for established procedures for review of final judgments. Hollywood Lakes Section Civic Ass'n, Inc. v. City of Hollywood, 676 So.2d 500, 501 (Fla. 4th DCA 1996). Thus, the declaratory judgment statute was never meant to "elucidate or interpret judicial decrees or judgments already entered, or to modify or declare rights thereunder." deMarigny v. deMarigny, 43 So.2d 442, 445 (Fla. 1949)(citations omitted). This is exactly what Plaintiff attempts to do.

On the basis of res judicata alone, the Complaint should properly be dismissed as a matter of law. As previously stated, res judicata bars the re-litigation of claims that were raised, or could have been raised in a prior action. Johnson v. Young, 964 So.2d 719, 720 (Fla. 3d DCA 2007). The elements necessary for the doctrine to apply are the following: (1) identity of the thing sued

for; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality in the person for or against whom the claims are made. Id. The general principle behind the doctrine is that "a final judgment by a court of competent jurisdiction is absolute and puts to rest every justiciable, as well as actually litigated, issue." Gomez-Ortega v. Dorten, Inc., 670 So.2d 1107, 1108-09 (Fla. 3d DCA 1996)(res judicata bars all matters raised or which could have been raised in the prior action). With respect to the causes of action sued on, the law requires only that the claims be substantially the same. Pumo v. Pumo, 405 So.2d 224, 226 (Fla. 3d DCA 1981).

In the instant case, the first element is satisfied because the identity of the thing sued for in both the underlying matter and in the Prior Action concerns the issue of amount of and entitlement to payment under the Note.

With respect to the second element, the causes of action are substantially the same because again, in each instance, the amount of and entitlement to payments under the Note were and are the subject of both cases. "The law, ..., requires only that the claims or causes of action be substantially the same; a request for different relief does not prevent the first proceeding from serving as a bar to a second action. Identity of causes of action is defined by similarity of the facts essential to the maintenance of both actions." Pumo, 405 So. 2d at 226 *citing to* Gordon v. Gordon, 59 So.2d 40 (Fla.1952); Smith v. Florida East Coast Railway Co., 151 So.2d 70 (Fla. 3d DCA 1963).(held Despite the claim that the causes of action lack identity because the subsequent action sought reformation and a declaration of rights whereas the earlier proceeding sought enforcement, the doctrine of res judicata precluded reconsideration of and barred the action for declaratory relief. The court determined that because the same evidence would be presented in both proceedings, the two causes of action were identical and the elements of res judicata had been satisfied.)

As for the third and fourth elements, Defendant does not argue that Plaintiff was a party to the Prior Action, however, Plaintiff is in privity with the Prior Plaintiff in the Prior Action, and pled in the Complaint, and established by law, thereby satisfying the third and fourth elements as clearly established under legal authority. Specifically, Plaintiff alleges that it acquired ownership of the mortgage and became the holder of the note that formed the basis of the underlying action after the entry of the Final Judgment. Compl., ¶ 17. Assuming the truth of Plaintiff's allegations, when Plaintiff acquired the mortgage and note, it assumed the position that its predecessor in interest held. *See Bevens*, 138 So.3d at 1188. Privity was established by the transfer.

Finally, res judicata not only covers the matters that were litigated but that could have been litigated and the issues raised in the Complaint were and could be raised in the prior action. *Gomez-Ortega v. Dorten, Inc.*, 670 So.2d 1107, 1108-09 (Fla. 3d DCA 1996). "A judgement on the merits rendered in a former suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action." *Fla. Dot*, 801 So. 2d at 105.

Plaintiff's predecessor and Defendant sought a determination of amounts due, in Defendant's case agreed to, under the mortgage and note in the prior litigation. Res judicata prevents Plaintiff from seeking a determination of amounts due under the mortgage and note in this litigation.

Plaintiff's action is barred by res judicata and must be dismissed.

#### D. Collateral Estoppel

"In contrast to res judicata, collateral estoppel does not require identity of causes of action." *Forty One Yellow, LLC v. Escalona*, 305 So. 3d 782, 788 (Fla. 2d DCA 2020); *See Brown*

v. State, 397 So. 2d 320, 322 (Fla. 2d DCA 1981). “For the doctrine of collateral estoppel to preclude relitigation of an issue in a subsequent action, the parties and issues must be identical, and the particular matter must have been fully litigated and determined in a contest resulting in a final decision of a court of competent jurisdiction.” Id citing to Dep't of Health & Rehabilitative Servs. v. B.J.M., 656 So. 2d 906, 910 (Fla. 1995).

Defendant would incorporate by reference herein the argument regarding res judicata and supplement as follows.

“For the doctrine of collateral estoppel to preclude relitigation of an issue in a subsequent action, the parties and issues must be identical, and the particular matter must have been fully litigated and determined in a contest resulting in a final decision of a court of competent jurisdiction.” Id citing to Dep't of Health & Rehabilitative Servs. v. B.J.M., 656 So. 2d 906, 910 (Fla. 1995).

“Collateral estoppel is a complete defense to the relitigation of an issue when there is an identity of parties or their privies, an identity of issues, and an actual litigation thereof in the first suit.” Se. Fid. Ins. Co. v. Rice, 515 So. 2d 240, 242 (Fla. 4th DCA 1987) *citing to* Stevens v. Len-Hal Realty, Inc., 403 So.2d 507 (Fla. 4th DCA 1981); Seaboard Coast Line Railroad v. Industrial Contracting Co., 260 So.2d 860 (Fla. 4th DCA 1972); 32 Fla.Jur.2d Judgments and Decrees § 114 (1981).

According to Lucky Nation, LLC v. Al-Maghazchi, 186 So. 3d 12, 14, LEXIS 192, \*3, 41 Fla. L. Weekly D 139 (4th DCA 2016), collateral estoppel has five elements, all of which must be met. (1) An identical issue must be presented in a prior proceeding. (2) The issue must have been a critical and necessary part of the prior determination. (3) There must have been a full and fair

opportunity to litigate the issue. (4) The parties in the two proceedings must be identical or in privity. (5) The issues must have been actually litigated.

Here, (1) action taken to determine the amount of and entitlement to payments under the Note was presented in the Prior Action ; (2) the issue of the amount of and entitlement to payments under the Note was a critical and necessary part of the prior determination; (3) the Prior Plaintiff as Plaintiff's predecessor in interest had full and fair opportunity to litigate the issue; (4) the Plaintiff is in privity with the Prior Plaintiff; and, (5) the issue of the amount of and entitlement to payments under the Note was litigated. Plaintiff is collaterally estopped from having this Court substitute its opinion for that of the prior trial and appellate courts because the amount of and entitlement to payments under the Note have already been litigated and decided in Defendant's favor, and the prior trial and appellate courts found Plaintiff's predecessor's unclean hands barred foreclosure

**E. The Plaintiff's Conduct is a Procedurally Improper Collateral Attack on the Amended Final Judgment**

"The "declaratory decree statute is no substitute for established procedure for review of final judgments or decrees. Nor is it a device for collateral attack upon them." Hollywood Lakes Section Civic Ass'n v. City of Hollywood, 676 So. 2d 500, 501 (Fla. 4th DCA 1996) *citing to DeMarigny v. DeMarigny*, 43 So. 2d 442, 445 (Fla. 1949); *see also* §§ 86.011, 86.021, Fla. Stat. (1995); City of Miami v. Eldredge, 126 So. 2d 169 (Fla. 3d DCA), *cert. denied*, 138 So. 2d 341 (Fla. 1961).

Plaintiff seeks to relitigate its defeats in prior courts by seeking a more favorable opinion from this Court. It cannot be allowed to do so. Plaintiffs request to have every single judgment

entered by a trial and appellate court to be subsequently relitigated by another court must not be allowed.

### **III. CONCLUSION**

A decade after the entry of the Amended Final Judgment, Plaintiff desperately seeks to avoid the prior determinations of Circuit Judge Susan R Lubitz and the Fourth District Court of Appeals that Plaintiff's predecessor and Defendant agreed to monthly mortgage payments of \$2,506.07, this was not for one payment but the term, Plaintiff refused multiple payments from Defendant under this agreement between the Parties, and as a result it would, "it would be unconscionable to render a verdict in favor of the Plaintiff."

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The relief sought is not allowed under the declaratory relief statute and is barred by the principles of res judicata and collateral estoppel. Further, as a result of the dispute to be resolved being as to the language in the Amended Final Judgment not the mortgage and note, it being sought almost a decade after the Amended Final Judgment, and the action being one for declaratory relief not foreclosure, is time-barred.

WHEREFORE, Defendant, CHERANE PEFLEY, respectfully requests that this Honorable Court deny Plaintiff's Motion for Summary Judgment, dismiss the declaratory action with prejudice, and grant such other relief as this Court deems just and proper.

Dated: December 23, 2024

Respectfully submitted,

Fort Lauderdale, Florida

**THE ELLIOT LEGAL GROUP, P.A.**

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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 23, 2024, I electronically filed the foregoing document with the Clerk of the Court using E-Filing Portal. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by E-Filing Portal or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

BY: /s/ Gavin Tudor Elliot

Gavin Tudor Elliot, Esq