

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO: 2016-7636 CA 01

LINDA JOSEPH,

Plaintiff,

vs.

CLERK OF THE COURT MIAMI-DADE  
COUNTY, FLORIDA et al

Defendants

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**MOTION FOR SUMMARY JUDGMENT**

**COMES NOW**, Defendant, CREDO, LLC ("Credo"), by and through its undersigned attorney and hereby moves this Honorable Court pursuant to Rule 1.510 Fla. R. Civ. P. for entry of a summary judgment and as grounds therefor would state:

Introduction

The Complaint and Counter-Cross Claim in this matter are predicated upon alleged competing interest in funds which are being held pursuant to a tax deed auction for real property located at 12350 NW 15<sup>th</sup> Avenue, Miami, Florida, which was conducted on or about March 19, 2015. Based upon the undisputed facts, Defendant/Counter/Cross-Claimant, Credo LLC, is entitled to a judgment as a matter of law.

Undisputed Facts

The following facts are undisputed and established by filings recorded in the Public Records of Miami-Dade County, Florida:

1. On October 21, 2013, a Final Judgment was entered against Plaintiff, Linda Joseph in the matter of Arvon Fund, LLC., vs. Linda Joseph Noel in the County Court in and for

Miami-Dade County, Florida in Case No. 2013-17595 CC 05. Thereafter, on or about January 7, 2014, a certified copy of the Final Judgment was recorded in Official Records Book 28979 at Page 2640 of the Public records of Miami-Dade County, Florida. A true and correct copy of the Final Judgment is attached hereto as Exhibit "A".

2. On January 8, 2014, a Writ of Execution was issued by the Clerk of the Court and placed in the hands of the Miami-Dade County Sheriff. The Sheriff executed upon the Writ of Execution and levied upon the real property located at 12350 NW 15<sup>th</sup> Avenue, Miami, Florida<sup>1</sup>. (the Subject Property") On March 26, 2014, the Sheriff conducted a sale of the subject property whereat it was purchased by Credo, LLC. (A true and correct copy of the Sheriff's Return and supporting documentation filed in Case No. 2013-17595 is attached hereto as Exhibit "B").

3. Credo, LLC, received a Sheriff's Deed which was duly recorded in Official Records Book 29124 at Page 1111 of the Official Records of Miami-Dade County, Florida. (A true and correct copy of the recorded Sheriff's Deed is attached hereto as Exhibit "C").

4. The Subject Property was thereafter sold at a Tax Deed auction on March 19, 2015 for the sum of \$73,700.00. (A true and correct copy of the Tax Deed is attached hereto as Exhibit "D").

5. On April 13, 2015, Credo filed an Affidavit of Claim for Tax Deed Sale Surplus Funds. (A true and correct copy of the file stamped Affidavit is attached hereto as Exhibit "E").

### **LEGAL ARGUMENT**

#### *Summary Judgment Standard*

Summary judgment is appropriate where the pleadings, affidavits and other evidence

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<sup>1</sup> The Subject Property is legally described as Lot 10, Block 2 GREGORY HEIGHTS, according to Plat thereof as recorded in Plat Book 49, Page 75 of the Public Records of Miami-Dade County, Florida.

reflect that there is no genuine issue of material fact in dispute and that the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510; *Kehle v. Modansky*, 696 So. 2d 493 (Fla. 4th DCA 1997). Plaintiff cannot avoid summary judgment by merely asserting a fact without any evidence to support it; all evidence which may support Plaintiff's contentions must be before the court to preclude summary judgment. See, *Nat'l Airlines v. Fla. Equip. Co. of Miami*, 71 So.2d 741, 744 (Fla. 1954). Moreover, despite the existence of some factual dispute, if the uncontroverted evidence in its entirety supports the facts asserted in this Motion, summary judgment is proper. See, *Bared v. Miami Prof. Sports, Ltd.*, 353 So. 2d 167, 167-68 (Fla. 3d DCA 1977).

#### *Analysis*

The legal issue in this case is simple and straightforward. Distribution of surplus funds garnered at a tax deed auction is governed by the provisions of Chapter 197, Florida Statute and Chapter 12 of the Florida Administrative Code. Succinctly, the scheme of distribution provides that monies are to be first paid to satisfy the tax deed applicant and the fees and costs incurred in the sale. Next any proceeds are paid to satisfy any municipal liens. Then, any valid unexpired liens of record are to be paid in their order of priority. Finally, any remaining funds are to be paid to the property owner of record. Fla. Admin. C. 12D-13.065. Said section also requires claims to be filed within ninety (90) days of the sale. It is undisputed that 1) Credo was the owner of record on the date of the tax deed auction, 2) timely submitted its Affidavit of Claim for Tax Deed Sale Surplus within ninety (90) days from the date of the sale, and therefore, (3) Credo is entitled to all surplus funds.

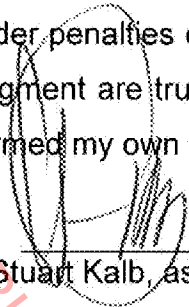
#### **Conclusion**

Based upon the undisputed facts of this case, Credo is entitled to the surplus funds held

by the Clerk of the Court after payment of any outstanding unexpired liens in their order of priority.

**VERIFICATION**

I, Stuart Kalb, as an authorized agent of Credo LLC, and its records custodian, do hereby verify and certify, under penalties of perjury that the allegations contained in the this motion for summary judgment are true and correct. Indeed, I personally reviewed the public records and performed my own title examination.

  
\_\_\_\_\_  
Stuart Kalb, as authorized agent

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on April 21, 2016, I electronically filed the foregoing document with the Clerk of the Courts by using the Florida Courts E-Filing Portal (the "Portal") as required by Rule 2.516, Florida Rules of Judicial Administration (the "Rule"). I **hereby further verify** that the Portal uses the names and e-mail addresses provided by the parties pursuant to subdivision (b)(1)(A) of the Rule, and will serve the foregoing document on each party by e-mail in compliance with the Rule.

Respectfully submitted,  
**Roniel Rodriguez IV, P.A.**  
Keystone Executive Plaza  
12555 Biscayne Blvd., 915  
N. Miami, Florida 33181  
305-773-4875 Dade/Direct  
954-769-0919 Broward  
305-600-1254 Monroe  
305-359-5196 Monroe Facsimile  
561-491-6581 Palm Beach Facsimile

By: /s/ Roniel Rodriguez  
Roniel Rodriguez IV  
Florida Bar No.: 544787  
E-mail: Ron@RJRfirm.com

**EXHIBIT A**

NOT AN OFFICIAL COPY - PUBLIC ACCESS - NOT AN OFFICIAL COPY - PUBLIC ACCESS



CFM 2014R0012662 DR BK 28979 Pg 2640f (1pg)  
RECORDED 01/07/2014 14:19:32  
HARVEY RUVIN, CLERK OF COURT, MIAMI-DADE COUNTY, FLORIDA  
LAST PAGE

2  
FILED

**IN THE COUNTY COURT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA**

ARVON FUNDING, LLC, aao Gordon Food  
Service,  
Plaintiff,

**CIVIL DIVISION**

CASE NO.: 2013-17595 CC 05

v.

NOEL ENTERPRISES LLC d/b/a Wing  
Zone; and LINDA JOSEPH -NOEL a/k/a  
Linda Joseph a/k/a Linda Marie Joseph,  
Defendants.

FILED FOR RECORD  
2013 OCT 21 AM 11:53  
CLERK OF COURT  
MIAMI-DADE COUNTY  
FLORIDA

**FINAL JUDGMENT LINDA JOSEPH -NOEL ONLY**

IT IS ADJUDGED THAT Plaintiff, ARVON FUNDING, LLC, aao Gordon Food Service, whose address is PO Box 1434, Grand Rapids, MI 49501, recover from the Defendant, LINDA JOSEPH -NOEL a/k/a Linda Joseph a/k/a Linda Marie Joseph, whose address is 275 NW 157<sup>th</sup> Street, Miami, Florida 33169, the sum of \$14,999.00, pre-judgment interest in the sum, of \$580.81, reasonable attorneys fees are reserved as to amount only as entitlement is vested by Section 68.065, Florida Statute and the Contract, and \$310 (filing fees and issuance of summons) / \$90 (service of process) as costs, for a total sum of \$15,979.81, for which let execution issue forthwith. Judgment shall bear interest at the legal rate, which is currently 4.75%, until paid in full. Jurisdiction is retained to enforce this judgment and to enter post-judgment relief.

IT IS FURTHER ORDERED AND ADJUDGED THAT the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, Roniel Rodriguez IV, Esquire, 20533 Biscayne Blvd., 1243, Aventura, Florida 33180, Facsimile No.: 1(305) 359-5196, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 10/21/13.

GLADYS PEREZ  
COUNTY COURT JUDGE  
STATE OF FLORIDA, COUNTY OF MIAMI-DADE

I hereby certify that the foregoing is a true and correct copy of the original on file in this office.

HARVEY RUVIN, CLERK  
Circuit and County Court (REAL)

Deputy Clerk



Bk 28879 Pg 4445 CFN 20130843208 10/23/2013 12:06:56 Pg 1 of 2 Mia-Dade Cty, FL

Book28979/Page2640 CFN#20140012662

Page 1 of 1

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**EXHIBIT B**

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**EXHIBIT C**

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FOLIO NUMBER IS: 06-2126-021-0300.

TO HAVE AND TO HOLD the said described property unto the said party of the second part, Credo, LLC

, as fully and absolutely as the said party of the first part, as Sheriff as aforesaid, can or should convey by virtue of said execution and the laws relating thereto.

IN TESTIMONY WHEREOF, The said party of the first part, as Sheriff aforesaid, has hereunto set his hand and affixed his seal this 26 day of March, A.D. 2014.

J.D. PATTERSON (Seal)  
Sheriff of Miami-Dade County, Florida

By: [Signature]  
Sergeant E. Valdes

Signed, sealed and delivered in our presence.

This instrument was prepared by: Sheriff of Miami-Dade County, Sheriff Services Bureau, 601 NW 1 Court, 9<sup>th</sup> Floor Miami, Florida 33136

[Signature]  
Charlean Johnson

[Signature]  
Silvia Raposo

STATE OF FLORIDA )  
                                  :  
COUNTY OF MIAMI-DADE )

BE IT REMEMBERED, that on this 26 day of March, A.D. 2014 before me, a Notary Public for the State and County aforesaid, personally appeared Sergeant E. Valdes, Deputy Sheriff of Miami-Dade County, Florida, well known to me and well known to me to be the person described in and who executed the foregoing instrument of writing, and he did acknowledge that he signed, sealed and delivered the same of his own free will and accord, for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF I have hereunto set my hand and notarial seal the day and year last above written.

[Signature]  
Notary Public, State of Florida at Large

X Personally Known  
Produced  
as identification.



**EXHIBIT D**

NOT AN OFFICIAL COPY - PUBLIC ACCESS - NOT AN OFFICIAL COPY - PUBLIC ACCESS



Tax Deed File Number 2014A00866  
Property Identification No 06-2126-021-0300

CFN 2015R0188481  
DR Bk 29548 Ps 3496; (1pg)  
RECORDED 03/24/2015 08:09:48  
DEED ODC TAX 442.20  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA  
LAST PAGE

TAX D E E D

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

Tax Sale Certificate Number 18092 issued on June 01, 2010 , and the application for the issuance of a tax deed was filed in the office of the Miami-Dade County Tax Collector. The applicant having paid or redeemed all other taxes or tax sales certificates on the property described below, and due notice of sale having been published, and no person entitled to do so having appeared to redeem said land, such land was sold for cash

to: BH-NV INVESTMENTS LLC  
whose address is: 3311 SW 53rd ST  
Fort Lauderdale, FL 33312

being the highest bidder at the public sale held on March 19, 2015 and who has paid the sum of his bid as required by the laws of this state.

NOW, on March 23, 2015 the County of Miami-Dade, State of Florida, in consideration of the sum of \$73,700.00 does hereby sell the following lands, including any hereditaments, buildings, fixtures and improvements of any kind and description, situated Miami-Dade County, Florida, and described as follows:

GREGORY HEIGHTS PB 49-75 LOT 10 BLK 2 LOT SIZE 62.000 X 105 OR 20530-4563-07-2002

Witnessed by:

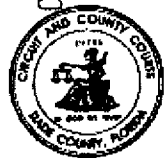
*Velinda Brown*

Velinda Brown e106015

*Monica E De La Cruz*  
Monica E De La Cruz e212109

HARVEY RUVIN,  
Clerk of the Circuit Court  
Miami-Dade County, Florida

BY: *[Signature]*  
DEPUTY CLERK # 30410725



BEFORE ME, the undersigned notary public, personally appeared Vanessa Ceide, Deputy Clerk of the Circuit Court in and for Miami-Dade County, Florida, who is personally known to me and who acknowledged the execution of this instrument to be his own free act and deed for the use and purposes therein mentioned.

SWORN TO AND SUBSCRIBED BEFORE ME ON March 23, 2015.

THIS DEED IS SUBJECT TO GOVERNMENTAL TAXES AND LIENS, AND TO ANY RIGHT, INTEREST, PUBLIC EASEMENTS, RESTRICTIONS, AND COVENANTS THAT MAY SURVIVE THE ISSUANCE OF THIS TAX DEED IN ACCORDANCE WITH APPLICABLE LAW

*[Signature]*  
Notary Public, State of Florida, At Large

This instrument prepared by

Daniel Calixte e33038  
Deputy Clerk of Circuit Court  
Miami-Dade County, Florida



**EXHIBIT E**

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**AFFIDAVIT OF CLAIM FORTAX DEED SALE SURPLUS FUNDS**

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The undersigned, upon oath, does depose and say:

1. My name is OSNIEL CASTROMAN and I am the Manager of CREDO, LLC. (claimant).  
My current mailing address is 19 West Flagler Street, Suite 919, Miami, Florida 33130
2. I hereby submit my claim for tax deed surplus funds being held by the Clerk of Circuit Court of Miami- Dade County, Florida resulting from the tax deed sale on March 19, 2015, under Tax Deed Case No. 2014A00866 The approximate amount of surplus being held is \$63,000.00. The subject property is located at 12350 NW 15<sup>th</sup> Avenue, Miami, Florida and the Folio # of the property is 06-2126-021-0300.
3. I hereby attest that I am entitled to the surplus funds by virtue of my interest in the property as: (check one)
  - Previous Owner-** legal titleholder of record of such property at the time of such tax deed sale and I have included the following :
    - Copy of Deed showing interest in property
4. I hereby make claim to the surplus funds generated from such tax deed sale. I understand that the Clerk of Circuit Court will subtract their fees from the sale pursuant to FL statute. I further understand that if I am making a claim as the owner/heir/beneficiary of the property, any valid liens and mortgages against the property will be paid before I am entitled to any of the surplus.
5. I have not, either before or after such tax deed sale, conveyed my title or assigned my interest in such property to any third party or any portion of the surplus funds from such tax deed sale being held by the Clerk of Circuit Court of Miami-Dade County, Florida and/or Dade County.

2015 APR 15 11:28:50

APR 14 2015  
VB

6. I have attached to this notarized affidavit a true and genuine copy of my current government issued photo identification that shows my address and date of birth.

7. I acknowledge that I am making the above representations under oath in order to receive payment of such surplus funds, and understand that, if it is later discovered or determined that payment of such surplus funds to me was in error, I am personally liable for the repayment of such surplus funds to the Clerk and/or Miami-Dade County, Florida.

Further affiant sayeth not.

  
CLAIMANT SIGNATURE

Osniel Castroman  
CLAIMANT PRINT NAME

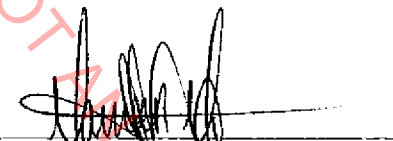
Witness# 1 Sign AND Print Name

Witness# 2 Sign AND Print Name

BEFORE ME, the undersigned authority, personally appeared OSNIEL CASTROMAN, who is personally known by me or who has produced FL Drivers License as identification and who by me was first duly sworn and cautioned, states that he/she executed the foregoing and the contents thereof are true and correct.

IN WITNESS my hand and official seal, this 13<sup>th</sup> day of April, 2015

My Commission Expires: 11/25/18

  
Notary Public



**Please remember to reference the tax deed number on all claim documents, ID's, and correspondence submitted to our office.**

Execution of this affidavit by an assignee of the claimant will not, by itself, be sufficient to substantiate a claim to funds. Any claim by an assignee must also include an affidavit and assignment from the party originally entitled to claim the funds prior to any assignment.

Please include current contact information: email, phone number(s) and/or additional addresses. Please allow 6-8 weeks to complete the review process. In some situations the review process may take longer. You may inquire on the status of your claim by sending an email to the Tax Deed Help Desk at: [info\\_deltax@leeclerk.org](mailto:info_deltax@leeclerk.org).

Please note: If claiming on behalf of an estate, funds will not be disbursed without an order of family administration under Part I, Chapter 735, Florida Statutes; or an order of summary administration under Part II, Chapter 735, Florida Statutes; or a letter or other writing under seal of the court under Section 735.301, Florida Statutes. Contact a legal professional if you have questions about estate or other legal issues. Employees of the Clerk are not authorized to provide legal advice.

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NOT AN OFFICIAL COPY - PUBLIC ACCESS



CFN 2014R0297317  
OR 8k 29124 Pgs 1111 - 1113 (3pgs)  
RECORDED 04/24/2014 15:32:12  
DEED DOC TAX 1.20  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

### DOCUMENT COVER PAGE

For those documents not providing the required space on the first page, this cover page must be attached.

It must describe the document in sufficient detail to prohibit its transference to another document.

An additional recording fee for this page must be remitted.

(Space above this line reserved for recording office use)

Document Title: Deed  
(Mortgage, Deed, Construction Lien, Etc.)

Executing Party: Miami Dade County

Legal Description:  
(If Applicable)

As more fully described in above described document.

Return Document To / Prepared By:  
Roniel Rodriguez  
150 W Flagler St. Ste 1525  
Miami, FL 33130

**F.S. 695.26 Requirements for recording instruments affecting real property**  
**(Relevant excerpts of statute)**

(1) No instrument by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of shall be recorded by the clerk of the circuit court unless:

(e) A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for use by the clerk of the court..



FOLIO NUMBER IS: 06-2126-021-0300

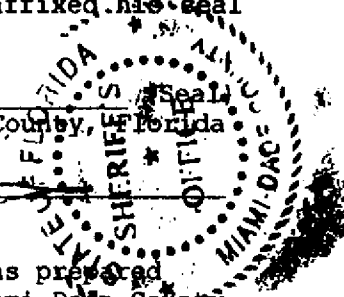
TO HAVE AND TO HOLD the said described property unto the said party of the second part, Credo, LLC

, as fully and absolutely as the said party of the first part, as Sheriff as aforesaid, can or should convey by virtue of said execution and the laws relating thereto.

IN TESTIMONY WHEREOF, The said party of the first part, as Sheriff aforesaid, has hereunto set his hand and affixed his seal this 26 day of March, A.D. 2014.

J.D. PATTERSON  
Sheriff of Miami-Dade County, Florida

By: [Signature]  
Sergeant E. Valdes



Signed, sealed and delivered in our presence.

This instrument was prepared by: Sheriff of Miami-Dade County, Sheriff Services Bureau, 601 NW 1 Court, 9<sup>th</sup> Floor Miami, Florida 33136

[Signature]  
Charlean Johnson

[Signature]  
Silvia Raposo

STATE OF FLORIDA )  
                                  )  
COUNTY OF MIAMI-DADE )

BE IT REMEMBERED, that on this 26 day of March, A.D. 2014 before me, a Notary Public for the State and County aforesaid, personally appeared Sergeant E. Valdes, Deputy Sheriff of Miami-Dade County, Florida, well known to me and well known to me to be the person described in and who executed the foregoing instrument of writing, and he did acknowledge that he signed, sealed and delivered the same of his own free will and accord, for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF I have hereunto set my hand and notarial seal the day and year last above written.

[Signature]  
Notary Public, State of Florida at Large

X Personally Known  
Produced  
as identification.



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