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Ruling Brings Clarity to Condo Foreclosures

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July 8, 2016

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Good news for condo and other associations once handicapped by lender liens on delinquent homeowners' properties: New case law clarifies legal precedent and clears the way to foreclose liens for unpaid fees.

The ruling from Florida's Fourth District Court of Appeal offers relief to associations grappling with the fallout of protracted lender foreclosures in the last housing market collapse.

The question before the appellate court was whether a notice of lis pendens from a lender, or first mortgage holder, prevented an association from filing its own action.

A 2012 decision in U.S. Bank National Association v. Quadomain Condominium Association Inc. held that it did, and the association's claim should be part of the lender's case instead of a separate lawsuit.

"The way it was applied created a lot of chaos," said Kaye Bender Rembaum managing member Robert Kaye, who teamed with Michael Villarosa to cinch the Fourth DCA explanation in the new case. "This latest ruling becomes very important because it clarifies the limitations of what Quadomain really meant to do."

Associations wrestled with Quadomain, arguing it deprived them of their best tool for recouping revenue. They had long relied on foreclosure to gain control of abandoned or distressed property to generate rent income while lender suits languished on crowded court dockets. They claimed the ruling led to a broader application than its narrow circumstances supported.

The case involved a bank-owned property and an alleged default on condo dues after the lender regained title. U.S. Bank had foreclosed on a unit but later moved to set aside the judgment after discovering it had omitted a party with an ownership interest.

The bank filed a notice of lis pendens and moved on a new foreclosure action. Meanwhile, the

association recorded a lien for unpaid fees against the bank and filed its own foreclosure claim. U.S. Bank defeated that suit on arguments the association could not foreclose but instead needed to intervene in the case for the superior mortgage.

"Quadomain created some confusion over whether an association could file when the bank had already filed," said Becker & Poliakoff shareholder Joy Mattingly, who was not involved in the litigation. "Our clients kept filing because we've always argued it doesn't affect the bank's ability to foreclose."

But for many, the ruling became a weapon for homeowners fighting association lawsuits. "They'd come in and raise the Quadomain defense," Kaye said.

But those days might be over after the Fourth DCA's ruling in a case that pitted Knightsbridge Village Homeowners Association Inc. against homeowner Fallon Rahima Jallali.

Aggressive Associations

Jallali's case dates back to 2007 when the lender filed for foreclosure, naming the homeowner and Knightsbridge as defendants.

While that litigation was playing out, a separate suit sprouted. Knightsbridge recorded a lien for delinquent maintenance fees in 2011 and successfully sued Jallali to foreclose that lien the following year. A successor lender later also won a judgment in the 2007 case.

Jallali's appellate attorney, Cyrus Bischoff of Miami, cited Quadomain in challenging Knightsbridge's win, but the appellate court noted two distinctions between the cases.

While the association in Quadomain sought to foreclose against the bank and homeowner, its counterpart in Jallali's case targeted only the homeowner. Another key difference: Knightsbridge imposed its lien under the association's declaration of covenants, creating a "prior recorded interest" that predated the lender's lien.

That interest remained inferior to the lender's claim, but could still proceed on its own, Fourth DCA Judges Martha Warner, Mark Klingensmith and Robert Gross ruled in an unsigned opinion.

"This new decision is significant. It will likely reward associations that want to be aggressive with their collection and foreclosure actions against delinquent unit owners," David Podein, a partner at Haber Slade in Miami, said. "It seems likely to have a detrimental effect on delinquent owners, who could now potentially be involved in two different lawsuits."

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