

Appellate Court Reverses Itself, Finds Condo Fees Are Subject to FCCPA Restrictions

By **Awilda Esteras** | September 1, 2020



Awilda Esteras with Siegfried Rivera

In an unexpected decision reverting from more than two decades of case law, Florida’s Fifth District Court of Appeal reconsidered its position on the question of whether condominium association fees qualify as debts under the Florida Consumer Collection Practices Act. The new opinion, which comes in a unanimous decision by all 11 judges of the Fifth DCA, redefines the term “consumer debt” under the FCCPA with its finding that obligations to pay condominium assessments may be considered debts under the FCCPA.

The appellate court’s decision in *Williams v. Salt Springs Resort Association* reversed the lower court’s ruling that dismissed the case in favor of the association and its property management company. In *Williams*, an association and property management company were sued after publicly posting a list of names of more than 100 delinquent unit owners along with the balance due by each owner. Williams, one of the owners

whose name appeared on the list, filed a class action complaint against the association and the property management company asserting the public posting of “deadbeat lists” to enforce the collection of consumer debt amounted to a violation under the FCCPA.

The lower court was not swayed, as the Fifth DCA’s 1997 opinion in *Bryan v. Clayton* had settled the matter with its finding that condo fees do not meet the definition of a consumer debt under the FCCPA.

After the defendants prevailed based on the 1997 ruling, the appellate court reviewed all the facts and decided to reconsider its position.

The appellate court found that for the FCCPA to apply in this case, the plaintiff’s payment obligation must arise from a money, property, insurance or services transaction which is primarily for personal, family or household purposes.

“The purchase of a condominium is unquestionably a property transaction, and Williams alleged her condominium purchase was of residential property for personal, family, or household reasons,” the Fifth DCA concluded. It further reasoned that because the association’s bylaws require Williams to pay annual assessments, the obligation arose from the purchase of her unit. “Williams has sufficiently alleged that her condominium assessment arises out of a consumer transaction to purchase property, and that her ongoing obligation to pay assessments is a ‘consumer debt’ under the FCCPA.”

Essentially, the entire Fifth DCA decided that the time had come for a careful review of its 23-year-old decision. The court recognized that other state courts and even the federal courts have since ruled that association fees do indeed meet the definition of a consumer debt under other similar statutes.

“Our considered decision to recede from Bryan is informed by over 20 years of other courts’ detailed analysis of the FCCPA and the FDCPA’s plain language,” the opinion concludes. “For example, the Sixth and Tenth circuits followed Newman’s reasoning in

concluding a condominium owner's payment obligations arise in connection with the condominium purchase transaction, pursuant to condominium bylaws and state law, and are therefore 'debt' under the Fair Debt Collection Practices Act."

By reversing the circuit court's decision and remanding the case back for further proceedings, associations have been put on notice to begin abiding by the FCCPA in their collections practices and avoid such expressly forbidden tactics as the publication of a list of delinquent unit owners in an attempt to shame them into compliance.

With this recent ruling, associations and property management firms that run afoul of the FCCPA in their collections tactics can now potentially face class action lawsuits leading to significant legal liabilities and costing hundreds of thousands of dollars. Community association boards of directors and property managers should consult with highly qualified and experienced association attorneys to conduct complete reassessments of all their collections procedures and protocols. For many communities, standard new clauses in all their debtor communications and other new additions to their procedures will be immediate necessities, and other long-term changes will also be in order.

*Attorney **Awilda Esteras** is an associate in the Plantation office of Siegfried Rivera and focuses on association collections.*

<https://www.law.com/dailybusinessreview/2020/09/01/appellate-court-reverses-itself-finds-condo-fees-are-subject-to-fccpa-restrictions/>