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Important Ruling for Associations Seeking to Foreclose in Advance of Lenders

Commentary by Jonathan M. Mofsky, Daily Business Review

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Community associations and their attorneys are applauding the recent ruling by the Fourth District Court of Appeal in Jallali v. Knightsbridge Village Homeowners Association, which eliminates an unintended roadblock that was being used to derail association foreclosure cases throughout the state.

The decision in Jallali clarifies the applicability of a 2012 ruling on association foreclosures by the same appellate court in U.S. Bank v. Quadomain Condominium Association. This prior ruling was being incorrectly applied to assert that associations were barred from filing foreclosure actions based upon a claim of lien recorded after the recording of a notice of lis pendens by a lender.

The language utilized in Quadomain created confusion for cases involving association lien foreclosures, which has become one of the primary remedies for associations to address the inequities caused by mortgage foreclosure cases that take years to complete. By filing and quickly prosecuting separate foreclosure actions based on liens for unpaid assessments,

associations have been able to acquire and rent properties embroiled in prolonged mortgage foreclosure proceedings.

The ruling created a substantial hurdle for associations to overcome against homeowners who raised the Quadomain defense, which in some cases enabled the owners to defeat or delay association foreclosure actions and remain in their residences without paying monthly dues or mortgage installments while the lenders' foreclosure cases languished.

The new ruling involves a mortgage foreclosure action filed against Fallon Rahima Jallali in 2007, which, as typically occurs, named the association as a defendant. The lender's foreclosure foundered for years, so the association recorded a lien for delinquent assessments against Jallali in 2011 and commenced foreclosure proceedings in 2012.

Lien And Foreclosure

The foreclosure judgment was entered in favor of the association, and Jallali appealed relying on the Quadomain defense. However, the appellate panel rejected the applicability of Quadomain and found some important distinctions between the cases.

The panel noted that the association in Quadomain sought to foreclose against both the bank's interest and that of the homeowner. By contrast, the association's foreclosure action in Jallali solely involved the delinquent homeowner.

In addition, the court found that the association's lien was imposed under its declaration, which created a "prior recorded interest" before the recording of the lender's notice of lis pendens. While the association's lien may have been inferior to the lender's mortgage in terms of priority, the court explained that the declaration served as a lien to secure future assessments and, under the declaration, the lien relates back to the date of the declaration's recording.

As such, the court ruled that the subsequent foreclosure action filed by the association was not barred. The ruling also noted additional grounds to support its holding, explaining that the provisions of Section 720.3085, Florida Statutes, imply that an association can file a lien foreclosure action even when there is a pending mortgage foreclosure action.

As many association declarations provide that all liens recorded by the association relate back to the date of the recording of the declaration, this decision should apply to a significant number of Florida associations that file a lien and foreclose against a delinquent owner despite a pending mortgage foreclosure action. It represents an important boon for associations throughout the state.

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