Appellate Win for Condo Association Actually a Loss for Florida Associations

By Laura M. Manning-Hudson

In the aftermath of the recession and foreclosure crisis, many Florida condominium associations have responded to their collections and budget shortfalls by aggressively pursuing the maximum payoff from new owners. That was the strategy employed by an Orlando condominium association in the recent appellate case of Central Park A Metrowest Condominium Association v. Amtrust REO I.

Amtrust REO, as an agent of AmTrust-NP SFR Venture LLC, which had been authorized to seek foreclosure of a mortgage, foreclosed the mortgage and obtained title to a unit in the community at the foreclosure sale.

However, as part of the condominium association's apparent strategy to aggressively pursue its collections for the previous owners' debts, the association issued an estoppel to Amtrust REO demanding the full amount of past-due assessments totaling more than $30,000.

In turn, Amtrust REO responded by demanding that the association apply the safe-harbor liability limits set forth in the state Condominium Act, and it also filed a motion to determine amounts due in the foreclosure action seeking to have the same judge who had entered the final judgment determine the amount that it now owed to the association. The foreclosure court considered the motion and ruled that the agent was entitled to the statutory safe-harbor limits, and the association appealed.

The Fifth District Court of Appeal agreed with the association's position that the trial court's order must be reversed because it lacked jurisdiction to decide a post-judgment issue that was not a part of the lender's foreclosure case, to wit the amount which the agent owed to the condominium association for past due assessments.

The opinion provides: "Generally, a trial court loses jurisdiction upon the rendition of a final judgment and expiration of the time allotted for altering, modifying or vacating the judgment. The court retains jurisdiction to the extent such is specifically reserved in the final judgment or to the extent provided by statute or rule of procedure."

Safe Harbor

However, while the association won on the technical issue regarding the post judgment jurisdiction of the trial court, it apparently lost the argument that an agent or servicer of a first mortgagee is not entitled to the safe-harbor protections afforded under the Condominium Act. Section 718.116(1)(b), F.S., provides that the liability of a first mortgagee "or its successor or assignees" which acquire title to a unit by foreclosure is limited to the lesser of 12 months of assessments or 1 percent of the original mortgage debt.

The Fifth District opinion also concluded: "Although the trial court appears to have correctly interpreted the substantive law at issue, the trial court lacked continuing jurisdiction to issue a ruling on that matter."

Accordingly, while the trial court's decision was quashed due to lack of jurisdiction, the opinion appears to have interpreted that an "agent" or "servicer" is the same as a "successor or assignee" and is therefore entitled to safe-harbor protection.

If the association now continues to demand the full amount of past-due assessments owed on the unit, the agent/servicer will be required to file a new action to determine its rights. If that is the case, the servicer could very likely seek — and be awarded — its attorney fees from the association.

Wipe Out

With this and other recent appellate decisions that address the application of the safe harbor limits, associations and their legal counsel would be wise to tread carefully with regard to aggressive collections tactics against servicers of first mortgages.

While it has become the norm to challenge an assignee or servicer's position on its entitlement to the safe-harbor protection, more and more we are seeing these same servicers and assignees skip the legal wrangling and go straight to court for a resolution.

Many of these assignees/servicers are now seeking not only declaratory relief from the court but also injunctive relief to force the association to provide estoppels that conform to the statute and apply the safe harbor. The drawback for these lawsuits for associations is that claims for injunctive relief also carry with them claims for prevailing party attorney fees that are recoverable pursuant to both the Condominium and Homeowners' Association acts.

Accordingly, in light of this and the other recent rulings, the associations that wrongfully pursue the denial of the safe-harbor caps are very likely to end up being liable for the attorney fees of the responding lenders, and these fees could substantially deplete, if not completely wipe out, any gains these association could have seen in these cases.

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