Board of Contributors

Ruling Quashes Lingering Questions on Partial Payments to Condo Associations

Commentary by Michael Toback, Daily Business Review

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Two years ago a ruling by the state's Second District Court of Appeal created a major wrinkle in the acceptance of partial payments by condominium associations when the payments had been endorsed and presented as full and complete remittances of the total outstanding debt owed by unit owners.

The court's ruling in the case of St. Croix Lane Trust v. St. Croix at Pelican Marsh Condominium Association essentially made it necessary for associations to consult with legal counsel when they received checks for partial payments that were in any way endorsed as representing the full and final payment of assessments owed by an owner. Prior to this ruling, associations were guided by a 2008 ruling by the Third District Court of Appeal which held that associations cannot refuse partial payments of assessments made by or on behalf of owners.

In St. Croix, the unit owner's attorney specifically wrote to the association attorney stating that the payment made by the owner in the amount of $840 was to be considered as the full and complete payment for the settlement of the account, which the association claimed was delinquent in excess of $38,000. While the Naples association responded to the owner's attorney by denying that the partial payment was the full and final payment of the amount owed, it accepted and deposited the check, applying the funds as a partial payment in accordance with Florida law.

The appellate court found that the association's depositing of the check containing the restrictive endorsement operated as an "accord and satisfaction," resulting in a waiver of the association's right to collect the remaining debt owed by the unit owner.

In response, the Florida Legislature during the session immediately following this decision passed an amendment expressly clarifying that Section 718.116(3), which governs the acceptance of partial payments by condominium associations, applies notwithstanding the law of accord and satisfaction under Section 673.3111 that was being applied by the St. Croix court.

This issue was again recently heard by the Second DCA, and this time the appeal hinged on whether the court may utilize the Legislature's clarifying amendment, which was enacted while the appeal was still pending, to interpret the pre-amended version of that statute. The court found that indeed it could, and that its decision in St. Croix had been abrogated by the legislative amendment.

Clarifying Intent

In the new ruling, which was filed in August in the case of Madison at Soho II Condominium Association v. Devo Acquisition Enterprises, Devo argued before the trial court that the Tampa association's acceptance of a payment for $2,412 constituted an accord and satisfaction of its total debt for unpaid fees and assessments, which the association contended was $40,645. While the litigation was in progress, the St. Croix decision was issued by the Second DCA, and accordingly the lower court then granted Devo's summary judgment.

The association appealed, arguing that the statutory amendment which was ratified two months after the trial court's decision clarified the Legislature's original intent, while Devo countered that a reversal in this case would be an improper retroactive application of a substantive change in law.

In its ruling to reverse the lower court's decision, the appellate panel found that Florida courts have "the right and the duty" to consider the Legislature's recently enacted statute clarifying its intent in a prior version of a statute. While this may appear to be akin to retroactively applying an amended statute to pending litigation, which has the potential to create constitutional concerns, "the legislature's clarification of a statute is a tool of statutory construction that can be used to guide the interpretation of the pre-amended version of the statute."

The court found that the Legislature's clarification of the prior version of a statute after a recent controversy, such as a court's interpretation of the statute in contravention of the Legislature's intent, is permissible. It also noted that the association was asking the court to revisit its prior construction of the pre-amended Section 718.116(3), not to retroactively apply a newer version of the statute. Because the court was applying the Legislature's amendment, which clarified its intent behind a prior version of a statute after a recent controversy, it concluded that retroactivity principles did not apply.

In addition, guided by the Legislature's clarifying amendment, the court found that the Legislature abrogated its interpretation of Section 718.116(3) in St. Croix.

With this ruling, Florida condominium associations will now be able to stand on very firm footing when they accept partial payments that are being presented as constituting full and complete final payments. They should simply respond to the payer to indicate that they are accepting the payment as a partial payment that will be applied to their debt in accordance with Florida statutes, and they should inform them of the complete remaining balance that is still owed.

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