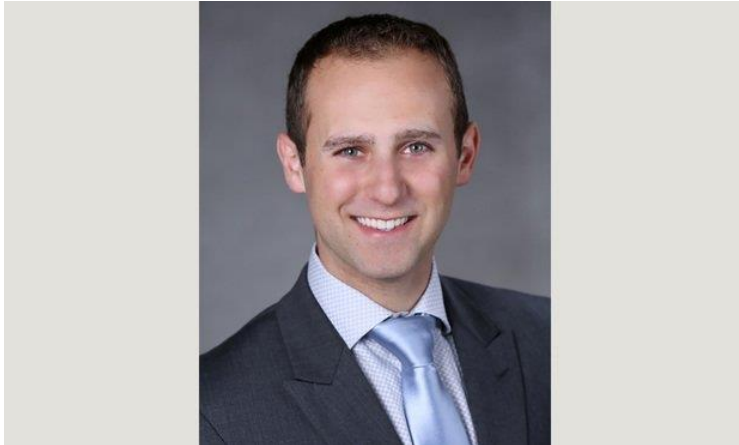


Ruling Illustrates Perils in Foreclosures of Noncompliance With Documents, Miscalculating Claim of Lien

By **Michael Toback** | May 11, 2021



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Most community association governing documents require the association to provide an annual budget to each homeowner with the assessments for the coming year and their due dates, as well as a certificate setting forth the amount of current assessments upon request. If an owner becomes delinquent in their assessment payments, Florida law calls for associations to issue a demand letter to the owner outlining the amounts that are outstanding. If such demands prove unsuccessful after 45 days (30 days for condominiums), associations may then file a claim of lien against the owner's residence for the assessment amount due.

A recent ruling by the state's Fourth District Court of Appeal highlights not only the significance of associations complying with these provisions of their governing documents, but also the implications of a mistake in the calculation of the "assessment amount due" in determining the ultimate validity of an association's claim of lien pursuant to Section 720.3085, Florida Statutes. In *Pash v. Mahogany Way Homeowners Association*, the HOA filed a foreclosure against unit-owner Gary Pash claiming he had failed to pay outstanding quarterly assessments and costs. Both parties filed dueling summary judgment motions, and the circuit court ultimately entered summary judgment for the HOA and denied summary judgment for the owner.

The Fourth DCA panel's majority opinion overturned the HOA's summary judgment, concluding that the evidence presented by the HOA failed to include each of the relevant budgets and notices, together with the proof they were provided to the unit owner, in order to combat Pash's affidavit in opposition.

Notwithstanding the reversal of the HOA's summary judgment due to its failure to provide the relevant budgets and notices and thus allowing genuine issues of fact to remain in dispute, the majority interestingly also affirmed the denial of Pash's dueling summary judgment motion centering on the validity of the HOA's miscalculated claim of lien. The association conceded that it made a mistake in its calculation of the assessments, but it corrected the amount owed when it filed the foreclosure action. The HOA contended that regardless of the mistake, Pash was delinquent in his debts to the association.

Despite a judge's dissenting opinion urging the panel to adopt an interpretation of Florida law that could invalidate any claim of lien containing an error in the amount of unpaid assessments, the majority's opinion concluded that if the court were to adopt the dissent's interpretation, it would be reading into the statutory language of Section 720.3085 what the state legislature never included.

“The Legislature certainly could have included a clarifying adjective such as ‘correct’ before the noun ‘assessment’ in its statutory requirements for a valid claim of lien,” reads the majority opinion. “Moreover, the Legislature could have provided that any error in a claim of lien, big or small, would wholly invalidate the amount of an association’s claim, but it chose to not do so. Instead, the Legislature provided homeowners with a procedure for contesting an error in a claim of lien by either filing a notice of contest pursuant to Section 720.3085(1)(b), Florida Statutes (2018), or challenging the foreclosure action. After all, the association is asserting only a claim of lien. Like all claims, it must be proven before the association can be considered the prevailing party. If the association does not prevail on the issues in dispute, the homeowner may recover his or her attorney’s fees and costs against the association. Nothing in Section 720.3085(1)(a) suggests that the claim must be free of error for it to serve as an otherwise valid claim of lien,” it concludes.

Accordingly, while the majority opinion concluded that the circuit court erred in entering summary judgment for the association, importantly and notably, it did not interpret the statute in question as invalidating a claim of lien simply because it contains a mistake or overstatement in the amount of unpaid assessments. Therefore, it upheld the circuit court’s denial of the unit owner’s motion for summary judgment, but it reversed the summary judgment for the association and remanded the case for further proceedings.

Foreclosure litigation can be contentious, costly and time-consuming for Florida community associations, and the challenges have only been exacerbated by the coronavirus pandemic and related moratoriums on evictions and foreclosures. Associations should always work with highly qualified and experienced community association attorneys on all their collections and foreclosure matters to help ensure they avoid any potentially expensive mistakes in their compliance with both Florida law and the provisions of their own governing documents. Otherwise, relatively

routine foreclosure matters could turn into expensive appellate cases that eventually go back to trial for additional litigation.

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<https://www.law.com/dailybusinessreview/2021/05/11/%EF%BB%BFuling-illustrates-perils-in-foreclosures-of-noncompliance-with-documents-miscalculating-claim-of-lien/>

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