Condo Law – Did The Association Lose Ground on Collection of Maintenance? An analysis of Aventura Management v. Spiaggia Ocean Condo

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Introduction

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Did The Association Lose Ground on Collection of Maintenance? An analysis of Aventura Management, LLC v. Spiaggia Ocean Condo

As a result of the increased foreclosure rates and more unit owners not complying with the monetary obligations to their community associations, the managerial and legal practice of collection of maintenance arrears has been an important area for the last several years. There are well known stories of law firms sitting on cases and waiting for the banks to foreclosure (while the association collects nothing); and stories of law firm sitting on cases, never even filing a court action, and after two or three years of non-activity providing estoppel letters for $6,000 to $8,000 in legal fees for just monitoring cases and otherwise "blackmailing" short sale buyers to pay the demanded estoppel fees in order to allow the sale to proceed (while the association collects nothing or next to nothing). However, this last piece of lawyering in the case of *Aventura Management v. Spiaggia Ocean Condo* has all of the condominium association industry in a state of shock and looking for some guidance.

Spiaggia Ocean Condo Association took title to a unit pursuant to the association's lien foreclosure action. The remaining first mortgage far exceeded the value of the unit, as is the norm with most cases today. About nine months later Aventura Management, LLC participated at the bank foreclosure auction and was the successful bidder, thereby taking title from the Association. Since it was not the bank that took title at the bank's foreclosure sale [therefore Section 718.116(1)(b) Safe Harbor would not apply], it would be expected that Aventura Management would be responsible for any remaining maintenance arrears owed on the unit, assuming the Association's supposed rental income from the unit did not cover all past due maintenance arrears. However, the result of the courts ruling was in essence a rejection of the previously usually enforced practice of having the third party bidder being responsible for all pending maintenance arrears, even if the Association took title. A brief explanation of the appellate court's reasoning follows.

When Aventura Management took title to the unit, the Association claimed that Aventura Management was responsible all past due assessments, late fees and interest since the time that the original owner defaulted, and sent a demand letter to Aventura Management for such amounts. Aventura Management argued that since the Association had taken title to the unit, it was the Association who should be responsible for the prior owner's debt to the Association.

The lower trial court ruled that: (1) the association lien did not merge with the final judgment; and (2) Aventura Management was responsible for the amounts claimed by the Association. In partially reversing the lower trial courts ruling, the Third District Court of Appeals ("3rd DCA") merely agreed to the obvious fact that the lien did not merge with the final judgment due to the statutory intent of having past and current owners jointly liable for maintenance arrears owed. This part of the decision was not a big victory for condominium associations at all – it just merely restated the obvious.

However, the problem is that the 3rd DCA ruled that the association is an "owner" for purposes of determining joint and several liability. This is the tragic part of the ruling and where it is frustrating that sufficient arguments were not presented to convince a majority of the 3rd DCA of the errors of their ways. There was a dissent to the decision, but it was not the majority of the 3rd DCA. One would ask that if the Association is now jointly and severally liable because it took title, what is the importance of having the Association's lien survive foreclosure?

The Association's legal counsel made the argument to the 3rd DCA that it would be ***"absurd"*** that a reading of the statute would result in the Association being a considered an owner for purposes of joint and several liability. Putting aside that, in my opinion, it is never a wise strategy to challenge a court's intellect and authority by stating that it would be ***"absurd"*** if the court did not rule as one desires, the court ruled that even though the statute provides remedies against all owners of the property (past and present) for maintenance arrears, the court emphasized that the Statute does not require the association to position itself as an owner since the association also has remedies against the prior owner personally without becoming an owner itself, i.e., without taking title. In other words, the 3rd DCA did away with the concept of deficiency and is now stating that the Association takes title at its own risk.

This is where I respectfully disagree with the decision as it negates the association's ability to collect maintenance arrears from past and current owners. It seems that the court was not sufficiently convinced of the arguments made and that even though the statute specifically provides for an exception to maintenance obligations (the Bank's Safe Harbor exception), the court did not find it all ***"absurd"*** to disagree with legal counsel for the association and has effectively created another exception to the association's ability to collect maintenance dues.

Where to we go from here? The ruling did not eliminate the concept of joint and several liability, nor the concept of equitable contribution, and therefore monies should still be collected from the third party bidder. The question is how much? One could argue that the previous unit owning association and the new third party bidder should split the amounts owed 50/50, however this is an argument that I believe should never have been made available to the third party bidders. The association lost all around on this decision. We continue to recommend that associations push forward with their collection cases so as to increase the rental income cash flow of the association once the association takes title to units. Doing nothing would result in no income coming in at all, and more importantly would likely result in other unit owners realizing that not paying their maintenance would not result in any negative consequences.

We also hope that there will be some legislative clarifications on this issue for the benefit of condominium associations.

This article is solely a partial explanation of all the issues related to the topic of this newsletter, and is not to be considered legal advice. The association should consult with its legal counsel to obtain explanations of all issues addressed herein and determine what collection procedures will most benefit your association.