

Condo Law – Aventura Management v. Spiaggia - update
The Circuit Court saves the Condominium’s claim for past due maintenance

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Introduction

Mr. Andrew Cuevas, Esq., is the President of Cuevas & Associates, P.A., and Vantage Property Title Company. Cuevas & Associates, P.A. provides legal services in the areas of Community Association Law, Real Estate law, and Business Immigration, including title insurance services through Vantage Property Title Company. If you have any questions regarding this article or any other questions, you can contact Mr. Cuevas at (305) 461-9500 or at acuevas@cuevaslaw.com. If you are interested in reading previous newsletters, please visit www.cuevaslaw.com, select the icon for **Newsletters**, and then choose the area of law you are interested in.

The Circuit Court saved the Condominium’s claims for past due maintenance!

In my February 2013 newsletter, we discussed the results of the Third District Court decision in *Aventura Management v. Spiaggia*, where even though the Third District Court of Appeal confirmed the fact that a condominium association’s lien survives foreclosure, the Third DCA issued an opinion stating that since the Association had taken title to the unit before the bank finalized its foreclosure action, that the Association was jointly and severally liable with the Third Party bidder who prevailed at the bank foreclosure sale.. The Third DCA then remanded the case to the lower tribunal, the Circuit Court, for further proceedings. While the original ruling of the Third DCA seemingly made things much worse for the condominiums as the ruling in *Aventura Management* stated that the Association would also be liable for the debt owed to itself, where before it was common practice for the third party bidder at a bank foreclosure sale to be responsible for all amounts owed to the Association, the Circuit Court clarified and “sanitized” the controversial ruling.

After the Third District Court of Appeal ruling in *Aventura Management*, the case was remanded to the Circuit Court for further proceedings. The Honorable Ronald Dresnick, Circuit Court Judge, heard the Summary Judgment Motion filed by the Association (stating that the third party bidder should still be liable for the past due maintenance) as well as the Summary Judgment Motion filed by the Third Party Bidder (claiming that the third party bidder would not be liable for any debt as a result of the Third DCA ruling). Judge Dresnick effectively saved the day for the Associations by ruling that:

“[t]he association is jointly and severally liable party together with the Third Party Purchaser and [previously] Foreclosed Owner. Association is the sole party to whom the Claimed Amount is owed. Accordingly, under joint and several liability, it is the Association’s sole right to pursue Third Party Purchaser severally as it has chosen, and not itself. ... [The] third party purchaser is liable to the Association for the full Claimed Amount secured by its lien.”

Judge Dresnick continued that the Third Party Purchaser has a right to seek equitable contribution against the Association, but such right cannot be exercised until the Third Party Purchaser has paid the full Claimed Amount owed to the Association. It is therefore arguable that the Third Party Purchaser, once it has paid in full to the Association all amounts owed, might be able to recover some money from the Association. Such amount would most likely will be only that maintenance owed by the Association for the months the Association owned the unit. This amount would therefore be \$0.00 if the Association collected rent during the months it had possession and first applied the rent to reduce the debt owed.

This is finally good news to the Associations. Associations can now freely continue with their foreclosure actions without fear of Third Party bidders claiming that they have the units free and clear. Remember, the banks still have their statutory Safe Harbor.

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 it should do to minimize these types of claims.