

Landmark Community Association Court Decision Handed Down

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Leading community association law firm **Kaye Bender Rembaum** has scored a landmark court decision for community associations in Florida.

"The Fourth District Court of Appeals has clarified its prior ruling from 2012, *U.S. Bank National Association v. Quadomain Condominium Association, Inc.*, which has been causing problems for community associations in collecting delinquent assessments," said Robert Kaye, Esq. "We are proud to have obtained this ruling which is one of the most important pro-association decisions made by an appellate court in Florida in many years and eliminates what has been a significant impediment in the collection process for all associations."

As a consequence of the *Quadomain* decision, many trial courts have been extending the application of that case to limit the ability of community associations to pursue delinquent assessment claims, often resulting in an inability to collect at all, leaving associations without a remedy.

"In our Firm's opinion, the application of that decision should have been limited to the specific facts of that case and that a broader application of the case in community association foreclosure matters was legally improper," said Kaye. "We continued to pursue the legal issue as an appeal with the Fourth District Court of Appeals and, as a result of our persistence, the Court has now resolved the overextension of the principles set forth in *Quadomain* in its decision in *Jallali v. Knightsbridge Village Homeowners Association, Inc.*"

In that case, the delinquency of the homeowner occurred over three years after the lender filed its foreclosure against the homeowners. The association foreclosure was filed in a separate law suit and proceeded through a final judgment. Prior to the foreclosure sale being held, the homeowner filed a motion in the lower court to vacate the final judgment and dismiss the case due to the failure of the association to file its claim in the lender foreclosure case, in accordance with *Quadomain*. In that the *Quadomain* holding had been interpreted by many lower court judges to require the association to bring its claim within 30 days of the lender filing a Public Records document, it would have been impossible for the association to have made its claim in the lender case since it has not yet accrued.

"The lower court in the *Jallali* case actually agreed with our position and denied the motion and the homeowner appealed to the Fourth District Court of Appeal," Kaye added. "Initially, the Appellate Court reversed the lower court, improperly applying the *Quadomain* principles, which would have eliminated any possible recovery for the association and made no logical sense."

However, after Kaye Bender Rembaum filed a Motion for Rehearing to reconsider that decision, the Court reversed itself and clarified the extent of the *Quadomain* case, significantly limiting it. The Court clearly stated that the recorded declaration of covenants, and/or declaration of condominium, constitutes a "prior recorded interest" which essentially removes the issue from the requirement to file the claim in the lender case set forth in *Quadomain*. The Court also expressly recognized the impossibility of complying with the prior requirement when the delinquency does not occur within the 30 day window of the lender filing and clearly stated that the Statute at issue, as well as the decision in *Quadomain*, were intended to protect the interests of the lender, not to other parties, such as the homeowner in this case.

"The decision in this case is great news for community associations in Florida," said Kaye.

The decision in the 4th was handed down on June 29, 2016.

Kaye Bender Rembaum is a full-service commercial law firm concentrating on the representation of more than 800 community associations throughout Florida. With offices in Broward and Palm Beach counties, the Firm was awarded the 2014, 2015 and 2016 Readers' Choice Award for Legal Services by the *Florida Community Association Journal*. On the first Thursday of every month from 5 to 6 p.m., Kaye and Michael Bender can be heard on Ask the Experts on WWNN 1470 AM discussing pertinent association law topics and hot issues facing community associations. The segment also runs on KBRLegal.com, iHeart Radio, YouTube and U Stream through video streaming. For more information, visit www.KBRLegal.com, call 954-928-0680 and follow the Firm on <https://www.facebook.com/KayeBenderRembaum/>.