

Appellate Court Extends Protection to Community Associations Relative to Third-Party Purchasers

By Robert Kaye, Esq. / Published June 2017



The collection process for community associations went back to the courts recently, and the result was another appellate court ruling in favor of one of our clients, which is beneficial to all community associations in Florida.

In its decision published on March 15, 2017, the Fourth District Court of Appeal has further confirmed and clarified that the lien of the association contained in the recorded declaration is sufficient to allow the association to pursue an independent foreclosure action when a lender foreclosure case is pending. In *Fountainspring II Homeowners Association, Inc. v. Veliz*, Case No. 4D-3408 (Fla. 4th DCA March 15, 2017), the Court was presented with a situation similar to what it had recently decided in *Jallali v. Knightsbridge Village Homeowners Association, Inc.*, Case No. 4D15-2036 (Fla. 4th DCA Jan. 4, 2017) involving an association that was in the process of foreclosing for unpaid maintenance, and the current owner was challenging on the technicality of court jurisdiction.

In *Fountainspring II*, the property in question was purchased by a third party at the association foreclosure sale. That purchaser held the property for more than two years, had it occupied by a tenant, and never paid assessments to the association. Before the association commenced its own collection against the new owner/third-party purchaser, the lender foreclosure case that had been

pending when the association completed its foreclosure case (allowing the new owner to take title to the property) concluded, and a foreclosure sale took place, which resulted in title to the property being taken away from the third-party purchaser. The third-party purchaser then went back to the trial court in the association foreclosure case to claim that the association should have brought its claim in the lender case rather than in a separate case as had been done (this was some time before the *Jallali* decision was published). The trial court granted that motion and the appeal of that decision followed.

In reaching its decision, the appellate court reiterated that the claim of lien of the association related back to the recording of the declaration of covenants, which predated the mortgage. As such, the association had a prior recorded lien interest, which did not require the association to bring its claim in the lender foreclosure case. By this conclusion, the principle of *Jallali* that involved the former owner of the property has been extended to include third-party purchasers as well. This marks another decision that is great news for community associations in Florida.



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Kaye Bender Rembaum is a full-service commercial law firm representing more than 1,000 community associations throughout Florida. The Firm was awarded the 2014, 2015, 2016, and 2017 Readers' Choice Award for Legal Services by the Florida Community Association Journal. Kaye and Bender are also guests on a weekly radio show the first Thursday of each month. Ask the Experts airs from 5 to 6 p.m. on WWNN 1470 AM and 93.5 FM and streams on KBRLegal.com, iHeart Radio, YouTube, and U Stream. For more information, visit www.KBRLegal.com, call (954) 928-0680, and follow the Firm on www.facebook.com/KayeBenderRembaum.