

IN THE SUPREME COURT OF FLORIDA

FLA TRUST SERVICES LLC, AS
TRUSTEE,

Petitioner,

vs.

CASE NO.: SC19-1391
LT CASE NOS.: 1D18-1457
2017-CA-003921

COASTAL CREEK CONDOMINIUM
ASSOCIATION, INC.,

Respondent.

_____ /

RESPONDENT'S BRIEF ON JURISDICTION

*On Petition for Discretionary Review from the
First District Court of Appeal*

MCCABE & RONSMAN

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STATEMENT OF THE CASE AND FACTS

This case concerns a party's liability for unpaid assessments levied by a condominium association following foreclosure of a mortgage on a condominium unit. Respondent COASTAL CREEK CONDOMINIUM ASSOCIATION, INC. ("Association") generally accepts Petitioner FLA TRUST SERVICES LLC, AS TRUSTEE's ("FLA Trust") Statement of the Case and Facts to the extent it outlines the procedural history, as supplemented herein.¹

On June 13, 2016, a certificate of title to condominium Unit 142 ("Unit") in Coastal Creek Condominiums was issued to Homes HQ, LLC ("Homes HQ"), the successful bidder at the judicial sale following foreclosure of a mortgage entered into by Tracy Langley and Todd Levraea (the "Original Owners"). (A:4). Then, on July 26, 2016, Homes HQ conveyed the property by quitclaim deed to FLA Trust, the current owner of the Unit. (A:4). After not receiving payment of assessments following the mortgage foreclosure, Association recorded a claim of lien against the Unit and filed a complaint for lien foreclosure and damages against FLA Trust. (A:4)

FLA Trust acknowledged that it was liable for assessments that accrued when it owned the Unit and was jointly and severally liable for assessments which came due while Homes HQ owned it. (A:4). However, FLA Trust argued that it was not liable for assessments which came due during the Original Owners' ownership of

¹ References to Petitioner's Appendix are indicated by (A:[page number]).

the Unit, as Association contended. (A:4-5). The parties filed competing motions for summary judgment, which in part required the trial court to determine whether FLA Trust's liability included assessments which came due during the Original Owners' ownership of the Unit or whether it was exclusively limited to assessments which came due during Homes HQ's (the immediately preceding owner) and FLA Trust's ownership. (A:5).

The discussion at the hearing focused on Section 718.116(1)(a) of the Florida Statutes (2017) and the Third District Court of Appeal's decisions in *Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.*, 105 So. 3d 637 (Fla. 3d DCA 2013) and other cases interpreting the 2013 version of the statute. (A:5); *see Bona Vista Condominium Association, Inc. v. FNS6, LLC*, 194 So. 3d 490 (Fla. 3d DCA 2016), *Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.*, 149 So. 3d 690 (Fla. 3d DCA 2014), *Park West Professional Center Condominium Association, Inc. v. Londono*, 130 So. 3d 711 (Fla. 3d DCA 2013), and *Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.*, 105 So. 3d 637 (Fla. 3d DCA 2013) ("*Spiaggia* line of cases"). Ultimately, the trial court held that Section 718.116(1)(a) of the Florida Statutes limited FLA Trust's joint and several liability to assessments that came due during the immediately preceding owner's ownership (Homes HQ). (A:5). However, the court explained that had it not felt bound to follow the Third District's decisions in

the *Spiaggia* line of cases, it would interpret the statute such that Homes HQ's liability for unpaid assessments that came due during the Original Owners' ownership flowed to FLA Trust. (A:5).

On appeal, the First District Court of Appeal acknowledged the *Spiaggia* line of cases interpreting the pre-2014 version of Section 718.116(1)(a) of the Condominium Act. (A:7). Also, the First District recognized that the Legislature added two sentences to the end of Section 718.116(1)(a) of the Condominium Act in 2014, which excluded the condominium association from the definition of "previous owner." (A:7); see Ch. 2014-133, § 10, Laws of Fla. Further, the First District stated that the fact that the condominium association was an intervening owner in the *Spiaggia* line of cases did not appear to have a bearing on the Third District's analysis, a suggestion with which Association would respectfully disagree.

In interpreting Section 718.116(1)(a) of the Condominium Act (2017), the First District stated that FLA Trust's and the Third District's reliance on the singular definite article "the" before "previous owner" was misplaced. (A:7). The First District then explained that "[t]he phrase 'previous owner' pertains to the person with whom the present owner has joint and several liability, not to the period of ownership during which the present owner is liable for unpaid assessments – the latter of which is at issue." (A:7-8). Further, the court stated:

Unlike the 2013 version of the statute that applied in the Third District cases, the version applicable in our case states that the term "previous

owner” does not include an association that acquires title and goes on to provide that “[a] present unit owner’s liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.”

Ultimately, the First District stated that “[w]hen the statutory provisions are read together, the legislative intent is unambiguous: the present owner is jointly and severally liable with the previous owner for unpaid assessments that came due during the ownership of both the previous owner (unless it was the association) and the original owner.” (A:8). Therefore, the First District held that FLA Trust is jointly and severally liable with Homes HQ for assessments that were unpaid by Homes HQ and the Original Owners. (A:9). Further, the court reversed summary judgment and certified conflict with the Third District’s decisions in the *Spiaggia* line of cases to the extent they limit a current owner’s joint and several liability pursuant to Section 718.116(1)(a) to unpaid assessments that came due during the ownership of the immediate prior owner, and not the original owner. (A:9). FLA Trust then filed a notice to invoke discretionary jurisdiction of this Court based on the First District’s certification of conflict.

SUMMARY OF THE ARGUMENT

Although the First District Court of Appeal certified conflict with decisions of the Third District and therefore the Court has discretionary jurisdiction, Association argues that the Court should decline to exercise jurisdiction because the

Third District cases were decided under a prior version of Section 718.116(1)(a) of the Condominium Act and were factually distinguishable. Therefore, Association argues that the Third District and other lower courts should have the opportunity to consider analogous cases under Section 718.116(1)(a) of the Florida Statutes as amended in 2014 so it may be better determined if review by the Court is warranted.

STANDARD OF REVIEW

The Court has discretionary jurisdiction to review a decision of a district court of appeal that is certified by it to be in direct conflict with a decision of another district court of appeal. Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi).

ARGUMENT

THE COURT HAS DISCRETIONARY JURISDICTION BUT SHOULD DECLINE TO EXERCISE IT TO ALLOW LOWER COURTS TO CONSIDER SECTION 718.116(1)(A) OF THE CONDOMINIUM ACT AS AMENDED IN 2014.

The First District Court of Appeal expressly certified conflict with the *Spiaggia* line of cases and therefore the Court has discretionary jurisdiction to review its decision. Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi). However, the Court should decline to exercise jurisdiction because other than the First District, lower courts have not had the opportunity to consider Section 718.116(1)(a) of the Condominium Act as amended in 2014 in a context where the condominium association is not an intervening owner of the unit. Further, the

legislative amendments in 2014 appeared to play a significant role in guiding the First District’s interpretation of the statute, which supports allowing other lower courts to consider the statute in light of the 2014 amendments. (A:8). Accordingly, the Court should decline to exercise jurisdiction to allow lower courts, including the Third District, to consider and interpret Section 718.116(1)(a) of the Condominium Act in light of the 2014 amendments. *see* Ch. 2014-133, § 10, Laws of Fla.

The *Spiaggia* line of cases were decided under a prior version of Section 718.116(1)(a) of the Florida Statutes, which did not include the last two sentences added in 2014 excluding a condominium association from the definition of “previous owner” and adding that “[a] present unit owner’s liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.” § 718.116(1)(a), Fla. Stat. (2014).² Also, in the *Spiaggia* line of cases, the condominium association was an intervening owner of the condominium unit at issue. Accordingly, the Third District in the *Spiaggia* line of cases did not have reason to be as concerned with whether the current owner was liable for assessments

² *Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.*, 105 So. 3d 637 (Fla. 3d DCA 2013) and *Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.*, 149 So. 3d 690 (Fla. 3d DCA 2014) were decided under the 2009 version of § 718.116. *Bona Vista Condominium Association, Inc. v. FNS6, LLC*, 194 So. 3d 490 (Fla. 3d DCA 2016) was decided under the 2013 version.

which became due prior to its ownership because the condominium association was the previous owner and was not excluded from the definition of “previous owner” in the version of the statute in effect at that time. Accordingly, as the Third District stated in one of the *Spiaggia* line of cases, any assessments which became due before the current owner’s ownership were “basically a wash” because the condominium association would be jointly and severally liable for them. *See Bona Vista*, 194 So. 3d at 493.

In contrast, here the condominium association (Association) never owned the Unit and the lower courts were considering Section 718.116(1)(a) of the Condominium Act as amended in 2014. Accordingly, although the First District did not appear to believe that the condominium association’s ownership of the unit in the *Spiaggia* line of cases was a significant factor in the Third District’s analysis, that fact was determinative of the current owner’s liability under the pre-2014 version of the statute when the condominium association was the previous owner. Accordingly, notwithstanding the certification of conflict, the Court should decline to exercise jurisdiction to allow the Third District and other lower courts to analyze a more factually analogous case under Section 718.116(1)(a) of the Condominium Act, as amended in 2014.

Finally, the interpretation of Section 718.116(1)(a) of the Condominium Act, as amended, affects condominium associations and purchasers of condominium

units in Florida to the extent it addresses the allocation or extent of assessment liability following transfers of units. However, first mortgagees of condominium units would not appear to be affected because their liability is established and limited by Section 718.116(1)(b) of the Condominium Act. Accordingly, there would not appear to be an urgency to resolve an apparent conflict between the Third and First Districts which would outweigh the consideration of allowing the Third District and other lower courts to consider more factually analogous circumstances under the post-2014 version of Section 718.116(1)(a) of the Condominium Act.

CONCLUSION

Considering the foregoing, the Court should decline to exercise jurisdiction to review the First District's decision.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the following parties in the manner indicated below on September 23, 2019.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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