

## Wave of Appellate Opinions on Association Assessments Owed by Foreclosing Lenders Create Roadmap for Practitioners

By Laura M. Manning-Hudson

Two recent appellate rulings, both of which were filed on Aug. 19, together with a prior opinion issued in July appear to create a roadmap for practitioners in the foreclosure realm with regard to whether the court in a mortgage foreclosure action retains jurisdiction to determine the amount of unpaid condominium and homeowners association assessments that a foreclosing lender must pay.

In July, the Fifth District Court of Appeal issued an opinion in *Central Park A Metrowest Condominium Assoc., Inc. v. Amtrust REO I*, which I wrote about in an article that appeared in the Aug. 18 edition of the *Daily Business Review*, finding that the trial court lacked jurisdiction to decide a post-judgment issue – namely the amount of assessments owed by the foreclosing lender for the prior owner’s past-due condominium assessments. The lender’s complaint had averred that the condominium association “may claim some interest in or lien upon the subject property by virtue of [a] Claim of Lien.” The association answered the complaint and asserted a counterclaim for unpaid assessments. The appellate court, however, found that despite litigating the issue of past-due assessments in a counterclaim, the trial court did not have jurisdiction to determine the issue post-judgment where the final judgment merely provided that “[j]urisdiction of this action is retained to enter further orders as are proper including, without limitation, a deficiency judgment.”

For the Fifth DCA, the issue was not whether the assessments had been litigated in the underlying action, but whether the court had specifically retained jurisdiction in its final judgment to determine their amount.

However, in the two most recent opinions issued by the Second and Fourth District Courts of Appeal, the standards vary. But, there’s a lesson here.

In *Citation Way Condominium Association v. Wells Fargo Bank and Leslie Linder*, the Fourth DCA found that the lower court had retained jurisdiction to determine the post-judgment issue of past-due condominium assessments where “[t]he issue of unpaid assessments was raised in the underlying foreclosure action and the third-party purchaser, Fannie Mae, had a direct relationship with the plaintiff, Wells Fargo.”

Wells Fargo, as the servicing agent for Fannie Mae, had alleged in its complaint that “its lien was superior to any other claims against title and interest except for unpaid condominium assessments as provided in section 718.116, Florida Statutes.” Unfortunately, the opinion does not reference the language in the final judgment, but apparently it was sufficient basis for the appellate court to decide that the issue had been raised in the underlying action and therefore the lower court could retain jurisdiction.

However, in *Grand Central at Kennedy Condominium Association v. Space Coast Credit Union*, the Second DCA, citing the *Central Park* opinion, agreed with the association, concluding: “The trial court lacked jurisdiction because entitlement to assessments was neither litigated nor adjudicated and the trial court did not specifically reserve jurisdiction to determine the amount of assessments due pursuant to section 718.116(1)(b).” The underlying final judgment did not address the condominium’s assessments but merely “contained only a general reservation of jurisdiction.” Apparently, condominium assessments (pre- or post-judgment) were never considered in this case.

As shown by these three rulings, the standard in each of the Second, Fourth and Fifth Districts varies as it pertains to post-judgment jurisdiction. While for some courts the issue depends on whether the assessments were litigated at the trial level (albeit, the extent of that litigation was not exemplified), for each of the courts the specific reservation of jurisdiction was key. In fact, the message could not be any clearer than it is in a footnote in the Second DCA’s opinion:

“This appears to be a prevalent issue in mortgage foreclosure actions to which homeowner or condominium associations are parties. In such cases, we would encourage the circuit courts to consider including in their final judgments specific language concerning the reservation of jurisdiction to address the issues of entitlement to and the amount of any unpaid assessments.”

Because attorneys typically submit proposed final judgments to the trial courts for consideration, these three opinions should serve as an instruction to practitioners to include specific language in their final judgments reserving jurisdiction to address the issue of unpaid assessments. Additionally, in order to ensure that the issue is “litigated” in the underlying case, association counsel should be similarly instructed to raise the issue of assessments (pre- and post-judgment) in their affirmative defenses to lender foreclosure cases.

For both the lenders and associations involved in foreclosure cases, it is almost always preferable that assessments be determined by the trial court as part of the foreclosure proceedings rather than via a separate action, thus saving the client both legal and court costs.

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