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Illinois Supreme Court affirms 1010 Lake Shore

By Dawn L. Moody

On December 3, 2015, the Illinois Supreme Court affirmed the previous rulings in the *1010 Lake Shore Association v. Deutsche Bank National Trust* case. The *1010 Lake Shore* case involved a scenario with which condominium associations are very familiar. Despite a foreclosing lender's obligation to pay common expenses commencing with the first day of the month following judicial sale, the lender in this case failed to do so. Consequently, the 1010 Lake Shore Association initiated a collection action against Deutsche Bank National Trust for not only the amounts owed and accrued *after* the foreclosure sale, but also for the unpaid common expenses incurred and accrued by the foreclosed owner *preceding* the foreclosure. Relying on Section 9(g)(3) of the Illinois Condominium Property Act, the circuit and appellate courts both held that as Deutsche Bank National Trust failed to pay assessments as required, the association's lien was not extinguished and entered judgment in favor of the association for the full balance owed.

The Illinois Supreme Court affirmed the decision of both the circuit and appellate courts. In its decision, the Illinois Supreme Court highlighted that Section 9(g)(3) of the Illinois Condominium Property Act plainly requires a purchaser at a foreclosure sale to pay assessments commencing with the first day of the month following the foreclosure sale and that such payment is an additional step required in order to extinguish a condominium association's lien. Further, the Illinois Supreme Court also held that Section 9(g)(3) of the Illinois Condominium Property Act cannot be used to extinguish a lien when the Association has not been named as a party to a foreclosure action, essentially reversing the decision of the Second District Court of Appeals in *Pembrook Condominium Association-One v. North Shore Trust and Savings*. Therefore, this ruling makes it clear that in order for a lender to fully foreclose a condominium association's lien, it must not only name the association in the foreclosure action, but also pay common expenses commencing with the first day of the month following the foreclosure sale, as required by Section 9(g)(3).

In addition, the Illinois Supreme Court made note of Section 9(j) of the Illinois Condominium Property Act. This Section provides a lender with the authority to request a statement of any unpaid amounts from the association and/or its manager for a unit against which it has a lien. Section 9(j) essentially states that such a request should be responded to within twenty (20) days. Our attorneys are seeing an increase in the number of requests for this information from lenders. Associations and their management should be prepared to begin responding to these requests in a timely fashion, so as to fully protect the Association's rights.

While this Illinois Supreme Court decision is good news for condominium associations, the ruling does not provide clarification as to when it becomes too late for a purchaser of a foreclosed property to submit payment in order to terminate the lien. We expect that issue to be further litigated in the future. At this time, we continue to recommend that condominium associations adopt a collection policy which outlines the timing for turnover of accounts for collection. Then, in response to the failure of owners to abide by such policies, full amounts should be demanded and legal action should be initiated in order to recover such amounts.