



Landmark Community Association Court Decision Handed Down

BY ROBERT
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A landmark court decision has been handed down for community associations in Florida. "The Fourth District Court of Appeal 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 Michael Bender, Esq. of Kaye Bender Rembaum. "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."

Since the *Quadomain* decision in December 2012, courts were relying on that case to hold that an association could not maintain its own separate foreclosure action if the lender already had a pending foreclosure action. The courts were dismissing pending association foreclosure cases, stating that the court did not have jurisdiction



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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 between 5:00-6:00 P.M., Robert 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. For more information, visit www.KBRLegal.com, call (954) 928-0680, and follow the Firm on www.facebook.com/KayeBenderRembaum/.

(because of *Quadomain*) if a lender foreclosure action was pending. The result for associations after such a dismissal was that it could not collect the assessments in its foreclosure case, and, as the case was dismissed by the court, the opposing party often would attempt to obtain an award of attorney's fees and costs as the prevailing party. This was the outcome regardless of the fact that the owner had not paid the assessments owed to the association. In such instances, associations were left with delinquencies in assessments without an available remedy to try to collect on them.

Additionally, independent, third parties often purchase property at a foreclosure sale on an association delinquency and then years later ultimately lose title to the property after the lender that had its own foreclosure case sitting for years without activity ultimately completes its foreclosure sale. (Third-party purchasers do not always investigate the status of the mortgage when purchasing at an association foreclosure sale.) Third-party purchasers that had purchased property at an association foreclosure sale months or years prior to the *Quadomain* decision were relying on *Quadomain* to attempt to have their title vacated and get their money back that had been paid at the time they purchased the property at the association foreclosure sale, even when these individuals had enjoyed the benefits of ownership for all that time, including collecting rent. Courts were granting such motions to vacate the title and ordering the funds returned to these third-party purchasers, despite the fact that the purchaser had owned and/or resided in the property for months or years, without paying the association during that time. These issues were all resolved in the recent decision.

"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 Bender. "We continued to pursue the legal issue as an appeal with the Fourth District Court of Appeal 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 lawsuit 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," Bender 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 Bender. As the recent *Jallali* decision holds that the *Quadomain* decision is not applicable to proceedings between an association and a delinquent owner, the association can proceed with its own foreclosure case without the risk of the case being dismissed for lack of jurisdiction and exposing the association to the risk of paying the opposing party's attorney's fees and costs. Additionally, if a third-party purchaser obtains title, the risk of that purchaser later attempting to rely on *Quadomain* to vacate the title and get their money back from the association has been eliminated. The decision by the Fourth District Court of Appeal was handed down on June 29, 2016. ■