



BUSINESS

Condo association beats bank in million-dollar foreclosure battle

BY MARTHA BRANNIGAN

It is a condominium association's version of winning the lotto.

A big bank missed its deadline to file for foreclosure on a million-dollar condo unit by 10 days.

As a result, Peninsula Condominium Association in Aventura will get to keep the condo — a fancy three-bedroom, three-bathroom bayfront pad that it took ownership of three years ago in its own foreclosure over \$61,313 in unpaid fees.

"They got a free condo," said Michael Cotzen, partner at Hollywood law firm Mansfield Bronstein, which represents the condo association. "You don't get anything free in this world — but they did."

The condo association's winning argument: The five-year statute of limitations for U.S. Bank to file for foreclosure had passed. Miami-Dade Circuit Judge Peter R. Lopez agreed.

"We are utterly and completely delighted," said Edward Steinberg, president of the Peninsula Condominium Association. "It's a profoundly positive impact for the association."

"This is a significant loss for the bank, an example of a bank getting slapped upside the head," said Ronnie Bronstein, a partner with Mansfield Bronstein. "I think this is an appropriate remedy in this type of situation where associations are left holding the bag."

The saga over Unit 2507 at 3201 NE 183rd Street in Aventura began in 2007 when Rivka Bichler fell behind on the mortgage and condo fees, according to court papers. Bichler paid \$1.5 million for the 3,273-square-foot unit in the frothy days of May 2005.

In December 2009, the condo association filed to foreclose and was awarded title to the unit in October 2010.

Since taking possession, the association has rented the unit for much of the time, fully expecting the bank would eventually bring its own superior foreclosure claim as holder of the first mortgage.

"Twenty-nine of 223 units were in default at one point," Steinberg said. "Through the legal process, we were able to rent many out, which had a profound positive impact on our cash flow. The banks were in gridlock."

U.S. Bank, as trustee for certificate holders of Structured Asset Mortgage Investments II Inc., Prime Mortgage Trust Certificate Series 2005-4, had filed an earlier foreclosure suit on Bichler's unit in 2008.

But the lender failed to show up for trial in February 2011, and the court dismissed the case without prejudice, meaning the lender could refile later.

According to court records, the bank was represented in that case by the law offices of Marshall C. Watson, a Fort Lauderdale foreclosure mill, whose owner last year agreed to Florida Bar disciplinary action that included surrendering his license and shutting down the firm.

A REFILEING

When U.S. Bank finally refiled for foreclosure on Nov. 19, 2012 — claiming it was owed more than \$752,000 in principal, interest and fees for its mortgage on the unit in a bid to wrest ownership from the condo association — Peninsula fought back.

Both sides agreed the statute of limitations for foreclosure actions is five years, but they disagreed over when the clock started ticking.

Peninsula argued in a motion for summary judgment that the statute of limitations began running when the bank sent the borrower an "acceleration notice" on Oct. 4, 2007. The notice warned that the total principal and interest would be due immediately if the default wasn't resolved within 35 days.

With that letter, the bank had taken the necessary steps to file for foreclosure on Nov. 9, 2007, setting the clock in motion on the statute of limitations, the condo association argued.

The bank disagreed. It said another affirmative step — beyond the acceleration notice — was required for the clock to start running, and the statute of limitations should begin when the bank's first foreclosure was filed Feb. 21, 2008.

"Their argument didn't make sense," said attorney Cotzen. "If their argument is correct, there is no point to the statute of limitations."

At a hearing May 8, the judge ruled in favor of Peninsula, dismissing the bank's foreclosure as "untimely."

A 30-day deadline for appeal passed with the bank taking no action.

While it isn't uncommon for a homeowner to raise the statute of limitations in a foreclosure case, Bronstein said, he hasn't seen the law used by a condominium association.

"What makes this unique is it's an association arguing the statute of limitations. Associations have really gotten slammed [in the foreclosure crisis,] and there could be 100 other associations in a similar situation," Bronstein said.

Banks usually have the upper hand over condo associations in foreclosure cases. Florida law protects banks, Bronstein said, by limiting their responsibility for back condo fees to the lesser of one year of fees or 1 percent of the mortgage principal.

WHO IS RESPONSIBLE?

In the Peninsula case, who is responsible on the bank's side for dropping the ball? That's hard to say.

Danielle Spradley of Orlando law firm McCalla Raymer represented the lender in the recent foreclosure case. She declined to comment, referring questions to the firm's managing partner, who didn't return calls.

Nicole Garrison-Sprenger, a spokeswoman for Minneapolis-based U.S. Bank, said in an email: "As the trustee for mortgage-backed securities, our role is purely administrative. It is the duty of the servicer to initiate foreclosure action, and they do so in the name of the trustee, which is why you see our name on the public filing."

Garrison-Sprenger, whose giant bank earned net income of \$5.65 billion in 2012, added: "The servicer that initiated this filing was EMC Mortgage, now known as JPMorgan Chase Bank NA, which then took over the handling in that name."

Chase spokeswoman Maribel Ferrer told the Miami Herald on Friday morning: "I'm still trying to get more information to see what our bank's role was in the case." Later Friday, she sent an email: "I just wanted to follow up and let you know that I do not have a comment."

The condo association has yet to determine what to do with its windfall. The unit, which isn't currently rented, would fetch roughly \$5,000 a month in rent, according to Steinberg.

Similar units are selling for \$1.1 million to \$1.2 million, according to Bronstein.

While the condominium association's board is aware of the court win, other unit owners will be notified in an upcoming association newsletter, Steinberg said.

"It's a seismic shift, and we're elated," Steinberg said. "We're deciding how to proceed."