SUPREME COURT

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Contact:
Stephen P. Armitage
Staff Attorney
(503) 986-7023

Case decided February 11, 2021.

The Bank Of New York Mellon Trust Company, National Association, v. Zahid Sulejmanagic et al., (CC CV13071012) (CA A163269) (SC S067155)

On review from the Court of Appeals in an appeal from the Clackamas County Circuit Court, Michael C. Wetzel, Judge. 299 Or App 261, 450 P3d 14 (2019). The decision of the Court of Appeals is reversed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings. Opinion of the Court by Justice Adrienne C. Nelson.

Today, the Oregon Supreme Court held that a first lienholder's foreclosure action against a condominium unit, previously filed but dismissed, was insufficient to retain priority over a condominium association's lien for unpaid condominium assessments when the condominium association gave otherwise proper notice under ORS 100.450(7).

When a condominium association has unpaid assessments against a condominium unit, the association may record and perfect a lien against the unit for those assessments under ORS 100.450. In limited circumstances, the condominium association can gain priority over the holder of the first mortgage or deed of trust, if (among other things) the association gives the first lienholder formal notice of the unpaid assessments, and the lienholder "has not initiated judicial action to foreclose the mortgage * * * prior to the expiration of 90 days following the notice[.]" ORS 100.450(7)(c).

In this case, the Bank of New York Mellon Trust Company (bank) had filed a civil action to foreclose a deed of trust on a condominium unit. Defendant Tanglewood Hills Condominium Association (Tanglewood) had a lien against the same unit for condominium assessments that had not been paid by the owner. After the bank's foreclosure action had been dismissed, Tanglewood gave notice of its lien under ORS 100.450(7). More than 90 days later, the bank later had the foreclosure action reinstated.

Tanglewood and the bank filed opposing motions for summary judgment. Tanglewood argued that the bank's foreclosure action was not effective to retain its priority over Tanglewood's lien, either because the action had been filed before Tanglewood gave notice under ORS 100.450(7), or because the dismissed action had not been reinstated before the 90-day notice period expired. The bank asserted that the statute only required it to "initiate" a foreclosure action; it had done so; and, therefore, Tanglewood could not obtain priority.

The trial court agreed with the bank. On Tanglewood's appeal, the Court of Appeals affirmed.

In a unanimous opinion by Justice Adrienne C. Nelson, the Supreme Court reversed. The Court explained that a condominium association's notice under ORS 100.450(7)(a) generally triggers an obligation on a first lienholder to act within 90 days, or the condominium association's lien will take priority. In this case, the bank had not acted before the 90 days expired. The Court further held that the bank could not rely on its previously filed foreclosure action, as that action had been dismissed by general judgment prior to the notice, and it remained dismissed throughout the entire 90-day period. Once the 90 days elapsed without the case being reopened or a new foreclosure action being filed, Tanglewood had been granted priority over the bank's interest by operation of ORS 100.450(7).