DIRT Periodic Developments for Friday, August 29, 2014
Chase Plaza Condo Ass'n, Inc. v. JPMorgan Chase Bank

Guest Editor: R. Wilson Freyermuth
John D. Lawson Professor, Curators' Teaching Professor
University of Missouri School of Law

A special "Thank You" to Benny Kass for the heads-up on today's Development (just handed down yesterday!).

Chase Plaza Condominium Ass'n, Inc. v. JPMorgan Chase Bank, N.A.
District of Columbia Court of Appeals (August 28, 2014)
Link to Opinion: http://www.dccourts.gov/internet/documents/13-CV-623plus.pdf

SYNOPSIS: Under D.C.'s condominium law, the association's assessment lien does have priority over an otherwise-first mortgage lien to the extent of six months of unpaid assessments, and thus an association lien foreclosure sale extinguished the lien of a mortgage lender that did not pay off the six months of unpaid assessments and thus failed to redeem its mortgage lien.

FACTS: Brian York purchased a condo unit in 2005, using the proceeds of a $280,000 mortgage loan from First Financial Services. [The mortgage was later assigned to WaMu and eventually came to be held by JPMorgan.] By 2008, York went into default both on his mortgage payments and on his monthly condominium unit assessments. In April 2009, Chase Plaza Condominium Association (the Association) recorded an assessment lien and began proceedings to foreclose that lien, giving notice to JPMorgan as well as a second mortgagee. A sale was conducted in February 2010, at which Darcy, LLC (Darcy), the only bidder, purchased the unit for $10,000.

Two months later, JPMorgan instituted foreclosure proceedings against York. After discovering that the Association had foreclosed on the unit, JPMorgan filed a complaint against the Association and Darcy to set aside the foreclosure sale, arguing that the Association's sale was void because the Association had not sold the unit subject to JPMorgan's first lien, which the Association lacked the power to extinguish. The trial court granted partial summary judgment to JPMorgan, holding that the Association's sale was void and that JPMorgan held title to the unit. The Association appealed.

HOLDING/ANALYSIS: The District of Columbia Court of Appeals reversed. The court noted that the case turned on D.C.'s condominium statute, and particularly on D.C. Code § 42-1903.13, which governs condominium foreclosures and which provides, in pertinent part:

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

(A) A lien or encumbrance recorded prior to the recordation of the declaration;

(B) A first mortgage for the benefit of an institutional lender or a first deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or

(C) A lien for real estate taxes or municipal assessments or charges against the unit.

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's lien.

The court held that the statute "effectively splits condominium-assessment liens into two liens of differing priority: (1) a lien for six months of assessments that is higher in priority than the first mortgage or first deed of trust — sometimes called a "super-priority" lien — and (2) a lien for any additional unpaid assessments that is lower in priority than the first mortgage or first deed of trust." While the court acknowledged that the statute did not expressly address the situation where an association forecloses and the sale does not generate enough to pay off both the association lien and the first mortgage lien, the court held that background principles of foreclosure law provide the answer: "liens with lower priority are extinguished if a valid foreclosure sale yields proceeds insufficient to satisfy a higher priority lien." The court held that the Association's super-priority lien held a higher priority than JPMorgan's deed of trust, which was thus extinguished by the Association's lien foreclosure sale.

JPMorgan argued that the concept of a split-priority lien was not part of the common law and thus that the Association's foreclosure should not be treated as sufficient to extinguish the otherwise-first mortgage lien. JP Morgan further argued that because the

statute gave priority to an association lien only "to the extent" of six months of unpaid assessments, the foreclosure of the association's lien could not properly extinguish the first deed of trust. The court rejected this argument, noting that it would "create a six-month condominium-assessment lien that had priority over the first deed of trust but could not extinguish the first deed of trust," and that "such an interpretation would be a significant departure from the basic principle that foreclosure on a higher priority lien extinguishes lower-priority liens." The court also noted that this result appeared consistent with the statute's legislative history, as the statute was modeled on comparable provisions in the Uniform Condominium Act and Uniform Common Interest Ownership Act (both of which provide associations with a six-month super-priority lien).

Finally, JPMorgan argued that it was unreasonable as a matter of policy to permit the association's lien foreclosure to extinguish first deeds of trust, as this would "leave mortgage lenders unable to protect their interests, which in turn will cripple mortgage lending in the District of Columbia." The court acknowledged but rejected these arguments, noting that competing policy concerns supported the court's result: "if foreclosure on super-priority condominium-association liens did not extinguish mortgage liens, then condominium associations often might be unable to find buyers at foreclosure sales, and thus condominium associations would be unable to take prompt steps to obtain timely payment of assessments.

The court remanded the case, however, for further proceedings as necessary to address JPMorgan's argument that the association's lien foreclosure sale should be invalidated based on the fact that the price Darcy paid ($10,000) was unconscionably low.

COMMENT 1: This decision is another in a recent string of decisions providing a comparable interpretation of the provisions of UCA § 3-116 or UCIOA § 3-116. See, e.g., *Summerhill Village Homeowners Ass'n v. Roughley*, 289 P.3d 645 (Wash. Ct. App. 2012); *7912 Limbwood Ct. Trust v. Wells Fargo Bank, N.A.*, 979 F. Supp. 2d 1142 (D. Nev. 2013). It is notable that in this case, the court cited the recent report of the Joint Editorial Board for Uniform Real Property Acts, "The Six-Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act" (June 1, 2013), in support of the ruling, nothing "That report concludes that foreclosure pursuant to the six-month super-priority lien under the UCIOA is properly understood to extinguish a first mortgage lien, leaving the buyer at the foreclosure sale with clear title to the property." [A copy of the JEB Report can be found at: http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf]

In addition, at its 2014 Annual Meeting in Seattle, the Uniform Law Commission approved proposed amendments to UCIOA § 3-116, one of which clarifies the text of §

3-116(c) to make explicit that the association's six-month lien priority is a true lien priority, such that its foreclosure would extinguish an otherwise-first mortgage lien.

COMMENT 2: JPMorgan argued that the extinguishment of a first mortgage lien was particularly troublesome because nothing in the DC condominium statute obligated the association to give notice of the foreclosure to the first mortgagee. In the actual case, the Association did give notice to the record holder of the first mortgage, but JPMorgan did not receive the notice because it had not recorded an assignment of the mortgage, and the court noted that JP Morgan "ha[d] not argued that the lack of a notice requirement renders D.C. Code § 42-1903.13(a)(2) unconstitutional either facially or as applied to JPMorgan in this case."

On this point, JPMorgan's argument seems legitimate, and the newest ULC amendments to UCIOA § 3-116 make explicit that an association lien foreclosure would not extinguish a first mortgage lien, notwithstanding the six-month super-priority, unless the association provides notice of the sale to the first mortgagee (to permit the first mortgagee to take steps to satisfy the unpaid assessments to the extent of the super-priority lien and thus to protect its first lien position).