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DC Court Of Appeals Interprets Amended Provisions Regarding Condo Lien Priorities

4 Dec 2024

In a decision issued last week, the D.C. Court of Appeals held that when a condominium association forecloses on its super-priority lien and its subordinate lien for more than six months of unpaid assessments, the sale must be made subject to the first deed of trust.

This Court in *Wonder Twins Holdings, LLC v. 450101 DC Housing Trust* interprets, for the first time, the 2017 amendments to the D.C. Condominium Act ("Act"). Specifically, D.C. Code § 42-1903.13 subsection (c)(4)(B)(ii) now requires that a condominium association conducting a foreclosure sale to provide the unit owner with notice prior to sale that states that the foreclosure sale is either (1) for the statutory six-month priority lien and not subject to the first deed of trust, or (2) for more than the statutory six-month priority lien and subject to the first deed of trust. D.C. Code § 42-1903.13(c)(4)(B)(ii).

This change, as interpreted in *Wonder Twins*, means that if a condominium association forecloses on both the super-priority lien portion and its subordinate lien for more than six months of assessments, the first deed of trust will survive the foreclosure even if the proceeds from the sale are insufficient to cover it. This overrules the previous interpretation in *4700 Conn 305 Tr. v. Capital One, N.A.,* where the court held that any first deed of trust would be extinguished in such cases.

Despite this change, the Court has maintained that the new provision does not alter its interpretation of D.C. Code § 42-1903.13(a)(2) of the Act, which holds that when the most recent six-months of unpaid condominium assessments constitute a super-priority lien, a condominium association foreclosing on only that six-month portion will extinguish any first deed of trust. *See Chase Plaza Condo. Ass'n*, *Inc. v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166 (D.C. 2014)*; Liu v. U.S. Bank Nat'l Ass'n*, 179 A.3d 871 (D.C. 2018); *4700 Conn 305 Tr. v. Capital One, N.A.*, 193 A.3d 762 (D.C. 2018).

In those cases, the court clarified the relationship between condominium foreclosures and first deeds of trust, establishing that if a condominium association forecloses solely on its six-month super-priority lien and the sale proceeds are insufficient to cover the first mortgage, the first deed of trust is extinguished. However, if the association forecloses on both the super-priority lien and additional assessments, the first deed of trust may survive the sale. Although the 2017 amendment preceded the court's decisions in *Liu* and *4700 Conn*, the court did not address the amendment's implications in either case.

In *Chase Plaza*, the court ruled that a condominium foreclosure sale extinguishes the first deed of trust when the association forecloses only on its super-priority lien and the sale proceeds are insufficient to pay off the first deed of trust. In *Liu*, the court held that the first deed of trust is effectively extinguished by the foreclosure on the six-month super-priority lien, regardless of language like "subject to the deed of trust" in the sale notice, citing the Condominium Act's anti-waiver provisions. In *4700 Conn*, the court reiterated its earlier ruling in *Chase Plaza* that condominium-assessment liens are split into two parts with differing priorities and also examined, for the first time, the impact of a condominium association foreclosing on more than just the super-priority portion of its lien.

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The key shift in this Court's interpretation in *Wonder Twins* is that when foreclosing on more than six months of assessments, the first deed of trust remains valid after the sale. The central question that the court will look to, going forward, is whether the condominium association foreclosed on just its six-month super-priority lien or both its six-month super-priority lien and any subordinate lien.

If you have any questions about this case or laws impacting real estate in and around the Washington, D.C. region, feel free to contact us. Our Real Estate Litigation and Transactions and Business Law Practice Groups are ready to assist.

Read the full case here.

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