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DC Super-Priority Lien on a Condo Cannot Foreclose Subject to First Priority Mortgage

13 Mar 2018

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Following from its decision in Chase Plaza Condominium Assoc. v. JPMorgan Chase Bank, 98 A.3d 166 (DC 2014), in which the DC Court of Appeals held that a DC condominium foreclosing on its statutory six-month *super-priority lien* could by law extinguish an otherwise first-priority mortgage when the proceeds of the sale were insufficient to satisfy that mortgage, the Court was asked to determine whether a condo association could choose to sell a condo unit "subject to the first mortgage" on the property while still enforcing its super-priority lien. The Superior Court held that it could, but in *Liu v. U.S. Bank N.A.*, Chief Judge Blackburne-Rigsby, joined by Judges Glickman and Thompson, held that it could not without contravening the *Chase Plaza* decision. The appellate court agreed that the anti-waiver provision of DC Code sec. 42-1901.07 prevented such a variance and protected associations from pressure by lenders. The Court rejected the equitable arguments by the lender. The result proved costly to U.S. Bank, which lost its nearly $800,000 lien on the unit. Worse, U.S. Bank tried to pay off the roughly $5,200 super-priority lien to stop the foreclosure sale, but did not get the payment to the association until the day after the sale was completed. Lenders clearly must act quickly to protect their interests upon receiving notice of a foreclosure under a super-priority condo lien. As a result of U.S. Bank's delay, the foreclosure sale buyer paid $17,000 for the unit, which was assessed at over $700,000, and received it free and clear of U.S. Bank's lien. Importantly, this case only addressed a condo lien for fees not paid prior to April 7, 2017, when DC Code sec. 42-1903.13(c)(4)(B) was changed to permit a condo association to foreclose either on the six-month super-priority lien not subject to a first deed of trust, or for more than the six-month lien but subject to the first deed of trust.

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