

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

WINTER GARDEN EXECUTIVE  
CENTRE CONDOMINIUM  
ASSOCIATION, INC.,

CASE NO.: 2014-CV-000031-A-O  
LOWER COURT CASE NO. 2013-SC-9910-O

Appellant,

v.

RED DILLARD STREET HOLDINGS,  
INC.

Appellee.

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Appeal from the County Court,  
in and for Orange County, Florida,  
Andrew Cameron, County Court Judge.

James E. Olsen, Esq.,  
for Appellant.

Christopher D. Donovan, Esq., and  
Mary-Beth T. Valley, Esq.,  
for Appellee.

Before SCHREIBER, LATIMORE, and DOHERTY, J.J.

PER CURIAM.

**FINAL ORDER AND OPINION AFFIRMING TRIAL COURT'S FINAL JUDGMENT**

Appellee, Red Dillard Street Holdings, LLC ("Red Dillard") brought an action against Appellant, Winter Garden Executive Centre Condominium Association, Inc. ("Association") in an attempt to gain reimbursement for paying \$4,931.37 in condominium assessments. Final Judgment was entered on Red Dillard's behalf on April 14, 2014. Association filed this appeal without seeking rehearing.

Red Dillard purchased five (5) condominium units from Association located in the Winter Garden Executive Centre. Association levies assessments against unit owners for common expenses for the operation and maintenance of the condominium property. Plaintiff acquired title to the units on April 3, 2013 as a first mortgagee through the foreclosure of a first mortgage, entitling it to the benefits of the Safe Harbor provisions of Section 718.116(1)(b), Fla. Stat. Prior to Red Dillard acquiring title, Association requested payment for November and December. Upon receiving invoices stating the amounts due, Red Dillard made these payments in anticipation of obtaining title. At this time, Red Dillard did not own these units yet and they were each three (3) years delinquent in payment of assessments to Association. In paying the invoices, it was reasonably believed that Red Dillard was paying assessments due for the months of November 2012, December 2012, and January 2013. Upon acquisition of title, Red Dillard paid Association an amount equal to twelve (12) months' worth of payments toward the previous unpaid assessments, in addition to the three (3) payments previously made. After Association refused to refund the extra three (3) months' payments, Red Dillard filed suit seeking reimbursement and/or credit for these three (3) payments voluntarily paid.

Association asserts that any payment received is and was to be applied pursuant to the provisions of Section 718.116(3), Fla. Stat. Under this assumption, the payments made by Red Dillard were applied to any interest, administrative late fee, costs and reasonable attorney's fees before going towards the delinquent assessment by the then-delinquent record title holder. Association makes this argument by comparing Section 718.116(3), Fla. Stat. and Section 718.116(1), Fla. Stat., stating that Section 718.116(3), Fla. Stat. controls in this situation as it is more specific. Association also claims that the trial court erred in relying on equitable principles in resolving an issue of law.

In response, Red Dillard asserts that Association's attempt to create new law by interpreting Section 718.116, Fla. Stat. is unnecessary due to the court basing its decision on sound principles of equity. Additionally, Red Dillard makes the argument that the aforementioned statutes do not specify what would happen if a first mortgagee contributed to its statutory liability early. Therefore, all early payments should be considered against the twelve (12) months of assessments owed as a foreclosing first mortgagee in accordance with the Safe Harbor provisions.

A first mortgagee may be required to pay condominium maintenance fees after it acquires title, and then only in a limited amount. *U.S. Bank Nat. Ass'n v. Tadmor*, 23 So. 3d 822, 823 (Fla. 3d DCA 2009). He is not obligated to pay condominium maintenance fees on a unit before he obtains title. *Id.* The safe harbor provision provides a statutory cap on this liability for unpaid assessments that become due prior to acquisition. *Bay Holdings, Inc. v. 2000 Island Blvd. Condo. Ass'n*, 895 So. 2d 1197 (Fla. 3d DCA 2005). This provides that:

“(b) The liability of a first mortgagee...who acquire(s) title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that become due prior to the mortgagee's acquisition of title is limited to the lesser of:

1. The unit's unpaid common expenses and regularly periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title...or
2. One percent of the original mortgage debt.”

Section 718.116(1), Fla. Stat. This Court has previously found that this is a first mortgagee's maximum liability and that it does not owe any additional amounts that may have accrued. This would include interest, late fees, or attorney's fees. *Bank of New York as Trustee for the Ben. Of the Certificate Holders v. The Greens COA, Inc.*, Case No. 2011-CA-016673-O, 2013 WL 1889448 (Fla. 9th Cir. Ct. Mar. 11, 2013).

Red Dillard made payments to Association based upon its request and characterization of such payments as being applicable to individual months' assessments. The invoices were given to Red Dillard by Association, had a specific due date which indicated that the payment was for that month, and included the relevant unit number. There is no reference to any late fees, administrative fees, interest or attorney's fees, for which Red Dillard is not responsible. Florida statute states that:

“Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.”

Section 718.116(3), Fl. Stat. Association relies on this as the crux of its argument. However, this does not state that it would include payments received by a future owner before title is transferred. Specifically, it would be illogical to think that the statutory intent was that, when a future owner makes early payments of the twelve past due assessments for which he would be responsible upon transfer of title, these funds would not go to said past due assessments and would instead go towards interest, administrative late fees, and attorney's fees for which the future owner would not have otherwise been responsible if he had waited to make the payments after acquisition of title. Essentially, this theory would result in punishing a first mortgagee for making early payments.

Red Dillard relied upon the invoices from Association to its detriment and, as a result, made payments that it believed to be specifically for the months of November and December. These payments were made based on Red Dillard's upcoming acquisition of title. These payments were intended to be put towards the twelve payments of assessments prior to acquisition of title, which Safe Harbor provisions dictate is the maximum liability for a first mortgagee.

Red Dillard has paid Association a total of fifteen (15) months of past due assessments, as opposed to the statutory cap of twelve (12). If an issue is clearly governed by established legal rules, equity may not interfere and disregard the controlling legal principles. 22 Fla. Jur.2d Equity § 2. In this case, however, there are no clearly established legal rules as to how to approach the issue of what actions to take when a first mortgagee's premature voluntary payments result in an overpayment. As a result, we must look to equity for the appropriate remedy.

If one's mistake is due to his own negligence and lack of foresight and there is absence of fraud or imposition, equity will not relieve him. *Graham v. Clyde*, 61 So. 2d 656, 657 (Fla. 1952). That is not the case here. A reasonable person would have believed that his money was being applied to monthly payments as opposed to interest, fees, etc., based on the wording used on the invoices that were given to inform Red Dillard of the amounts due. This mistake was not made due to Red Dillard's own negligence and lack of foresight.

As a result of the laws of equity, unjust enrichment must be avoided. The equitable remedy of "money had and received" constitutes a remedy to recover money erroneously paid or received by a party when to permit the party to keep the money would unjustly deprive the paying party of his ownership of the money. *Sharp v. Bowling*, 511 So. 2d 363, 365 (Fla. 5th DCA 1987) (when an owner inadvertently pays the debt of another, the law of equity affords the owner a remedy to recover from one who would otherwise be unjustly enriched by the owner's unilateral mistake). This remedy is founded upon the equitable principle that no one ought to be unjustly enriched at the expense of another.

This Court has previously found that a condominium association is not permitted to charge late fees, interest, and collection costs that accrued prior to the first mortgagee taking title.

*Bank of New York as Trustee for the Ben. Of the Certificate Holders v. The Greens COA, Inc.*, Case No. 2011-CA-016673-O, 2013 WL 1889448 (Fla. 9th Cir. Ct. Mar. 11, 2013) (a benefit was conferred on the condominium association by submitting payment before acquisition of title, and it would be inequitable for the association to retain said benefit so the Court ordered reimbursement of any amounts that exceeded the Safe Harbor limitations); *Deutsche Bank Trust Co. v. Bennett*, Case No. 2009-CA-052688, 2014 WL 1225293 (Fla. 18th Cir. Ct. Mar. 24, 2014); *The Bank of New York Mellon Trust Co. v. Rosario*, Case No. 2010-CA-13567, 2014 WL 1058272 (Fla. 4th Cir. Ct. Mar. 17, 2014); *HSBC Bank USA, N.A. v. Abreu*, Case No. 2009-CA-007638, 2014 WL 708904 (Fla. Cir. Ct. Feb. 24, 2014); *Deutsche Bank Nat. Trust Co. v. Nickens*, Case No. 2009-CA-022357-O (Fla. 9th Cir. Ct. Feb. 6, 2014). While Association could first apply the payments of the *previous* owner to interest and fees, the same cannot be done to Red Dillard as these costs were accrued before it obtained title.

As a result of the rules of equity, it would be unjust for Association to retain an extra three (3) months of funds from Red Dillard. Association was incorrect in applying Red Dillard's payments to interest and fees, and therefore, should reimburse Red Dillard the amount that was paid for the extra three (3) months.

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court's Final Judgment is **AFFIRMED**.

**DONE AND ORDERED** in Chambers at Orlando, Orange County, Florida, this 26th day of January, 2015.

/S/  
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**MARGARET H. SCHREIBER**  
**Presiding Circuit Judge**

LATIMORE and DOHERTY, J.J., concur.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished via U.S. mail and/or electronic mail to **Judge Andrew Cameron**, 425 N. Orange Ave., Orlando, Florida 32801; **Christopher D. Donovan, Esq.**, and **Mary-Beth T. Valley, Esq.** at 420 South Orange Avenue, CNL Center II, 7<sup>th</sup> floor, Orlando, Florida 32802-6507, as counsels for Appellee; and **James E. Olsen, Esq.**, at 646 E. Colonial Drive, Orlando, Florida 32803, as counsel for Appellant on the 26th day of January, 2015.

/S/ \_\_\_\_\_  
Judicial Assistant