IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

REAL ESTATE SOLUTIONS HOME SELLERS, LLC,

Appellant,

v. Case No. 5D18-3569

VIERA EAST GOLF COURSE DISTRICT ASSOCIATION, INC.,

Appellee.

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Opinion filed January 3, 2020

Appeal from the Circuit Court
for Brevard County,
Stephen R. Koons, Judge.

Michael P. Kelton, of Paul, Elkind, Branz & Kelton, P.A. Deland, for Appellant.

Robert N. Manning, of Manning Law Firm, PLLC, Melbourne, for Appellee.

ORFINGER, J.

Real Estate Solutions Home Sellers, LLC ("RESHS") appeals an order dismissing its declaratory judgment action filed against Viera East Golf Course District Association ("the Association"). RESHS's action sought a judicial determination of its liability for homeowner's association ("HOA") assessments against a home ("the Property") located in the Viera East Golf Course Community ("the Community) that it purchased at a

foreclosure auction. After filing the action, RESHS sold the Property to a third party. As a result of the sale, on the Association's motion, the trial court dismissed RESHS's declaratory judgment action as moot, concluding that because RESHS no longer owned the Property, it lacked standing to proceed. We reverse.[1]

RESHS buys distressed and foreclosed properties, remodels them, and sells them. In August 2017, RESHS bought the Property located in the Community. The Property is subject to the Declarations, Covenants, Conditions, Easements and Reservations for Viera East Golf Course Residential District ("the CCR"), which requires owners of properties in the Community to pay quarterly assessments "to fund common expenses." Under the CCR, if the HOA assessments are not timely paid, the Association is authorized to place a lien on the property. Because the previous owner of the Property had not paid the HOA assessments for an extended period, the Association placed a lien on the Property.

After RESHS purchased the Property, the Association asserted that its lien had survived the foreclosure and sent RESHS a statement, indicating that RESHS owed $19,032.64, for the unpaid HOA assessments and penalties incurred by the previous owner. RESHS refused to pay the past due HOA assessments and penalties based on its interpretation of Article VII of the CCR, which provides, in relevant part:

> ARTICLE VII
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> Assessments
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> Section 1. Creation of Assessments. . . .
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> All Assessments, together with interest, penalties, late charges, processing or other fees, costs, expenses and

[1] RESHS does not appeal the dismissal of its reforeclosure claim.

reasonable attorney's and paralegal's, fees, shall also be the personal obligation of the Person who was the Owner of such Unit or Unplatted Parcel at the time the Assessment arose, and his **grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance**, **except no first Mortgagee who obtains title to a Unit or Unplatted Parcel pursuant to foreclosure of a first Mortgage, or pursuant to a deed in lieu of foreclosure of a first Mortgage, shall be liable for unpaid Assessments which accrued prior to such acquisition of title.**

. . . .

Section 6. Subordination of the Lien to First Mortgages. The lien of Assessments, including interest, penalties, processing or other, fees, late charges, costs, expenses and reasonable attorney's and paralegal's fees, shall be subordinate to the lien of any first Mortgage upon any Unit or Unplatted Parcel. The sale or transfer of any Unit or Unplatted Parcel shall not affect the Assessment lien or the personal liability of the Owner of such Unit or Unplatted Parcel for payment of the Assessment. **However, the sale or transfer of any Unit or Unplatted Parcel pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments (but not the personal liability of the prior Owner for said unpaid Assessments) as to payments which became due prior to such sale or transfer.** No foreclosure, sale or transfer shall relieve such Unit or Unplatted Parcel from the personal obligation or liability for the payment of any Assessments (including the right to file a lien for nonpayment thereof for any Assessments thereafter accruing or becoming due. **When a Mortgagee holding a first Mortgage of record or other purchaser of a Unit or Unplatted Parcel obtains title pursuant to remedies under the Mortgage, or by deed in lieu of foreclosure, such Mortgagee or purchaser, its successors and assigns shall not be liable for the share of the Common Expenses or Assessments of the District Association chargeable to such Unit or Unplatted Parcel which become due prior to the acquisition of title to Such Unit or Unplatted Parcel by such acquirer.** Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from owners of all the Units or Unplatted Parcels, including such acquirer, its successors and assigns.

(Emphasis added).

The Association disagreed with RESHS's position and continued to seek payment from RESHS. In turn, RESHS filed an action seeking a declaratory judgment as to the effect of Article VII, Section 6 of the CCR on its rights and potential liabilities for the unpaid HOA assessments and penalties that had come due before it purchased the Property. The Association answered, and as one of its affirmative defenses, asserted that RESHS was jointly and severally liable with the previous owner for all unpaid HOA assessments pursuant to section 720.3085(2), Florida Statutes (2017), which provides that a property owner "is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title."

Two months after filing suit, RESHS sold the Property. The Association then moved to dismiss the complaint as moot because RESHS no longer owned the Property. Following a hearing, the trial court dismissed RESHS's complaint, concluding RESHS no longer had standing to maintain its declaratory judgment action. The trial court reasoned that by transferring its ownership interest, RESHS was no longer the owner, and thus, was not entitled to a declaration of rights.

"The purpose of a declaratory judgment is to afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations." Santa Rosa Cty. v. Admin. Comm'n, Div. of Admin. Hearings, 661 So. 2d 1190, 1192 (Fla. 1995) (citing Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991)). A declaratory judgment "may not be invoked if it appears that there is no bona fide dispute with reference to a

present justiciable question."[2] Ashe v. City of Boca Raton, 133 So. 2d 122, 124 (Fla. 2d DCA 1961); see Ready v. Safeway Rock Co., 24 So. 2d 808, 811 (Fla. 1946) (Brown, J., concurring specially) (explaining that it is well settled that declaratory judgment proceeding must be based on actual controversy, and that no proceeding lies under declaratory judgments act to obtain judgment that is merely advisory or merely answers moot or abstract question); see also Godwin v. State, 593 So. 2d 211, 212 (Fla. 1992) (reiterating that case becomes moot when "it presents no actual controversy," "issues have ceased to exist," or "when the controversy has been so fully resolved that a judicial determination can have no actual effect").

RESHS argues that the trial court erred because under the Association's theory of liability, its potential liability for the unpaid assessments did not end with its sale of the Property. See § 720.3085(2)(b), Fla. Stat. (2017). We agree. The sale of the Property did not resolve the dispute between the parties. Consequently, there is still a need for a for a judicial declaration analyzing section 720.3085 and the CCR to determine RESHS's liability, if any, for the unpaid HOA assessments. See, e.g., Park W. Prof'l Ctr. Condo. Ass'n v. Londono, 130 So. 3d 711, 712 (Fla. 3d DCA 2013) (holding that current owner of condominium was jointly and severally liable with previous owner for unpaid assessments dating back to when previous owner took title to property).

[2] We review a trial court's mootness determination de novo. Coventry First, LLC v. State, Office of Ins. Regulation, 30 So. 3d 552, 560 (Fla. 1st DCA 2010). Likewise, this Court reviews an order dismissing a complaint with prejudice de novo. Chimera Servs., Inc. v. Prevatt, 267 So. 3d 556, 557 (Fla. 5th DCA 2019).

For these reasons, we hold that RESHS's declaratory judgment action was not moot based solely on its sale of the Property. As a result, we reverse the trial court's order dismissing the complaint and remand for further proceedings.

REVERSED and REMANDED.

EISNAUGLE and TRAVER, JJ., concur.