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

TRIDENT ASSET MANAGEMENT, LLC,

Appellant,

v.

Case No. 5D20-2130
LT Case No. 2016-CA-000844

2050 CONDOTEL INN CONDOMINIUM ASSOCIATION, INC., EXCELLENCE HOLDING, LLC, SARAH BOUGHANMI GOMEZ, BMS REAL ESTATE, LLC, LD GROUP AMERICA, INC., ET AL,

Appellees.

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Opinion filed February 4, 2022

Appeal from the Circuit Court
for Osceola County,
Margaret H. Schreiber, Judge.

Shannon McLin Carlyle, William D. Palmer, and Erin Pogue Newell, of Florida Appeals, Orlando, for Appellant.

Patrick H. Willis, of Willis & Oden, PL, Orlando, for Appellee, 2050 Condotell Inn Condominium Association, Inc.

No Appearance for other Appellees.

WALLIS, J.

Appellant, Trident Asset Management, LLC, appeals the Final Judgment of Foreclosure entered in favor of Appellee, 2050 Condotel Inn Condominium Association, Inc. Appellant contends that the trial court misinterpreted and misapplied the safe harbor provision contained in section 718.116(1)(b), Florida Statutes (2018). We agree and reverse the portion of the Final Judgment that awarded Appellee $168,000 in damages under section 718.116(1)(b). In all other respects we affirm.[1]

At issue in this appeal is a promissory note in the amount of $300,000, which was secured by a mortgage to purchase fifty-eight condominium units in a building located in Kissimmee. Appellant became the owner of the units by virtue of a deed in lieu of foreclosure. Appellee brought a foreclosure action against Appellant to foreclose its lien against the condominium units that resulted from an arrearage of common expenses or regular periodic assessments that had accrued against the units before Appellant acquired ownership of them.

[1] We reject without comment the remaining arguments that were raised by Appellant.

Below, Appellee argued that the safe harbor provision in section 718.116(1)(b) meant that Appellant owed $3,000 per unit, reflecting 1% of the mortgage debt per unit, for unpaid assessments that came due before Appellant took title of the condominium units. In contrast, Appellant maintained that, under the same safe harbor provision, it owed 1% of the original mortgage debt, which is $3,000 total for all of the condominium units.

The trial court ultimately interpreted the safe harbor provision in section 718.116(1)(b) as requiring Appellant to pay $3,000 per unit instead of $3,000 total, which resulted in Appellant owing Appellee $168,000 for unpaid assessments that came due before it took title to the units.[2] On appeal, Appellant argues that this interpretation of the safe harbor provision was erroneous. We agree.

Section 718.116(1)(b) reads, in pertinent part, as follows:

> (b) 1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:
>
> a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the

[2] Only fifty-six of the fifty-eight condominium units identified in the mortgage were the subject of the foreclosure proceedings.

> acquisition of title and for which payment in full has not been received by the association; or
>
> b. **One percent of the original mortgage debt.** The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. . . .

(Emphasis added).

We conclude that the trial court's interpretation of section 718.116(1)(b) failed to recognize the significance of the language directing that the amount of the safe harbor calculation "is limited to the lesser of . . . [o]ne percent of the original mortgage debt." This clear and unambiguous language limits the calculation to a percentage of the original mortgage debt—$300,000. This interpretation of section 718.116(1)(b)1.b. is further supported by the fact that the term "the unit" is not used when discussing the "original mortgage debt." Had the Legislature intended that "one percent of the original mortgage debt" be calculated on a "per unit" basis, it would have included that language in section 718.116(1)(b)1.b. as it had in section 718.116(1)(b)1.a. See Fla. Carry, Inc. v. Univ. of N. Fla., 133 So. 3d 966, 971 (Fla. 1st DCA 2013) ("Where the legislature includes wording in one section of a statute and not in another, it is presumed to have been

intentionally excluded.").[3] Therefore, we reverse the portion of the Final Judgment that awarded Appellee $168,000 under the safe harbor provision and remand for the trial court to award Appellee $3,000 and to recalculate any interest and fees stemming from that amount.

AFFIRMED in PART, REVERSED in PART, REMANDED with Instructions.

LAMBERT, C.J., and SAWAYA, T.D., Senior Judge, concur.

[3] We note that the trial court's interpretation of section 718.116(1)(b)1.b. would result in Appellant being required to pay more than 50% of the original mortgage debt to Appellee, an amount that is in direct conflict with the Legislature's intent to limit the liability of a first mortgagee or its successors or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for unpaid assessments to, at most, 1% of the original mortgage debt.