FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3729

SVI TRUST,

Appellant,

v.

WILLIAMS WALK CONDOMINIUM ASSOCIATION, INC.,

Appellee.

On appeal from the Circuit Court for Duval County.
Eric C. Roberson, Judge.

February 26, 2021

PER CURIAM.

Appellant SVI Trust challenges the final judgment of foreclosure entered in favor of Appellee Williams Walk Condominium Association, Inc. At oral argument, counsel for SVI clarified that it does not contest foreclosure itself. Rather, SVI asserts that it is entitled to a trial on the question of damages, that is, the $33,054.70 in assessments, late fees, and interest that the judgment reflects is owed to the Association. SVI argues that genuine issues of material fact exist as to the amount. Because we agree with SVI that the trial court erred when it adjudicated the amount of damages as a matter of law, we reverse the final judgment of foreclosure and remand for further proceedings.

The dispute in this case centers on SVI's refusal to pay certain association assessments, fees, and costs associated with a condominium unit that SVI purchased at a foreclosure sale in July 2015. The Association seeks to foreclose on a lien for these unpaid amounts, some of which had accrued before SVI's purchase of the unit, and some of which accrued after the purchase. Focusing only on the unpaid amounts that pre-date the purchase, as a defense to foreclosure, SVI asserts that the Association is estopped from seeking the amounts because, SVI alleges, the Association's manager and its president both made statements to SVI's trustee before the July 2015 foreclosure sale that SVI would not be responsible for any outstanding, pre-purchase assessments, fees, and costs associated with the unit. SVI asserts that it relied on these representations in its determination to purchase the unit out of foreclosure.

In opposition to summary judgment, SVI submitted an affidavit from the trustee, who stated under oath that he personally was involved in the decision to purchase the unit; that prior to purchasing the unit, the Association's representatives told him there were no outstanding assessments on the unit that SVI would have responsibility for paying; and that he relied on those representations as inducement to purchase the unit. In support of summary judgment, the Association submitted affidavits stating that no such conversation ever took place.

Summary judgment is appropriate only when "the pleadings and evidence show 'that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Bristol v. Wells Fargo Bank, Nat'l Ass'n*, 137 So. 3d 1130, 1132 (Fla. 4th DCA 2014) (quoting Fla. R. Civ. P. 1.510(c)). "When a party raises affirmative defenses, '[a] summary judgment should not be granted where there are issues of fact raised by [the] affirmative defense[s] which have not been effectively factually challenged and refuted.'" *Alejandre v. Deutsche Bank Trust Co. Ams.*, 44 So. 3d 1288, 1289 (Fla. 4th DCA 2010) (quoting *Cufferi v. Royal Palm Dev. Co.*, 516 So. 2d 983, 984 (Fla. 4th DCA 1987)). In assessing the existence of any disputed material facts, we view the evidence—and draw all inferences—in the light most favorable to SVI as the non-moving party. *Id.*.

Applying this standard to the case before us, we conclude that reversal is required. The long-standing estoppel doctrine may be stated as follows:

> (1) Words and admissions, or conduct, acts, and acquiescence, or all combined, causing another person to believe in the existence of a certain state of things. (2) In which the person so speaking, admitting, acting, and acquiescing did so willfully, culpably, or negligently. (3) By which such other person is or may be induced to act so as to change his own previous position injuriously.

Coogler v. Rogers, 7 So. 391, 394 (Fla. 1889); *see also Quality Shell Homes & Supply Co. v. Roley*, 186 So. 2d 837, 841 (Fla. 1st DCA 1966) (stating the essential elements of estoppel as "(1) a representation by the party estopped to the party claiming the estoppel as to some material fact, which representation is contrary to the condition of affairs later asserted by the estopped party; (2) a reliance upon this representation by the party claiming the estoppel; and (3) a change in the position of the party claiming the estoppel to his detriment, caused by the representation and his reliance thereon" (quotation and citation omitted)).

We reject the Association's argument that, as a matter of law, a purchaser of a condominium unit in foreclosure (read: a non-unit owner) cannot later assert an estoppel defense based on oral statements as to whether any back-assessments are due. Unlike in the cases on which the Association relies, here SVI asserts reliance on estoppel statements made before it became an owner, regarding a matter (the amount of outstanding assessments) that would not be reflected in the Association's declarations or other governing documents. In turn, there is a clear conflict in evidence over whether the Association is estopped from seeking in foreclosure the pre-purchase assessments, fees, and costs based on purported representations made by the Association's manager and president. SVI's trustee swears that those representations were made; the Association's witnesses swear they were not. This is not a conflict that the trial court could resolve without a trial. Given this material factual dispute related to the amount of foreclosure damages, we reverse the final judgment and remand for further proceedings.

REVERSED and REMANDED.

OSTERHAUS, NORDBY, and TANENBAUM, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Peter E. Nicandri and Michael T. Fackler, Milam Howard Nicandri Gillam & Renner, P.A., Jacksonville, for Appellant.

Austin T. Hamilton, Jimerson Burr, P.A., Jacksonville, for Appellee.