

RENDERED: DECEMBER 7, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2011-CA-000830-MR

VILLAS AT WOODSON BEND  
CONDOMINIUM ASSOCIATION, INC.

APPELLANTS

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE JEFFREY T. BURDETTE, JUDGE  
ACTION NO. 09-CI-00231

CITIZENS NATIONAL BANK

APPELLEES

OPINION  
AFFIRMING

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BEFORE: LAMBERT, NICKELL, AND VANMETER, JUDGES.

NICKELL, JUDGE: In this foreclosure action, The Villas at Woodson Bend Condominium Association, Inc. (“The Association”), has appealed from orders entered on February 11, 2011, and April 1, 2011, authorizing the judicial sale of South Fork Development, Inc.’s (“South Fork”), interest in the condominium development known as The Villas at Woodson Bend (“The Villas”), located on the

shores of Lake Cumberland in Pulaski County, Kentucky. For the following reasons, we affirm.

This case represents the continuing saga of a residential development which has been embroiled in controversy for a number of years, mainly between the developer and the homeowner's association. The factual background regarding the development of The Villas and the conflicts between the Association and South Fork was set forth in detail in our opinion rendered this same date in *Villas at Woodson Bend Condominium Association, Inc., et al. v. South Fork Development, Inc. and Citizens National Bank*, 2010-CA-000578 ("Developer Action"). In that matter, the Association alleged the trial court erred in finding South Fork retained the rights to conduct future development within the condominium regime. We disagreed and affirmed the ruling of the trial court.

In the instant appeal, the Association alleges the same trial court erred in ordering the future development rights in the project were subject to judicial sale in this foreclosure action. In support, the Association launches a nearly identical attack on the trial court's reasoning as it waged against South Fork in the Developer Action. Having previously concluded the matter of future development rights in favor of South Fork, we are constrained to affirm in the instant matter on grounds of collateral estoppel.

On February 18, 2009, and while the Association's 2008 action against South Fork was pending, Citizens National Bank ("Citizens") filed the foreclosure action from which this appeal stems. Citizens had provided

construction and other financing to South Fork to develop The Villas. Upon South Fork's default, Citizens sought to enforce its mortgages, promissory notes, security agreements, financing statements and personal guaranty agreements.<sup>1</sup> The suit identified all property owned or controlled by South Fork against which Citizens claimed a lien, including a boat dock and sewer treatment facility servicing the development, and several completed or partially completed but unsold units. Citizens did not initially seek to foreclose on South Fork's future development rights in the project as the trial court had indicated in the Developer Action that no such rights existed. On August 20, 2009, Citizens moved for summary judgment. Following a hearing, the trial court granted judgment for Citizens on November 20, 2009, and entered an order of sale of South Fork's property to satisfy the judgment amount.

In March 2010, the trial court reversed course in the Developer Action and ruled that South Fork did, in fact, retain rights to future development of the project, prompting the Association to initiate an appeal in that action. Based on the new ruling, Citizens moved the trial court to amend the order of sale in the foreclosure action to include South Fork's future development rights. The Association responded to the motion by setting forth the same argument it had advanced in the Developer Action—alleging South Fork's ability to continue

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<sup>1</sup> The foreclosure action named as defendants: South Fork; The Villas Boat Club, Inc.; four named individuals who had signed personal guaranty agreements for the outstanding indebtedness; the Association; and another bank which held a mortgage on a condominium unit allegedly owned by South Fork.

development had expired. Thus, the Association contended no future development rights existed upon which Citizens could foreclose.

The trial court convened a hearing on the motion on August 20, 2010. Consistent with its orders entered in the Developer Action, the trial court concluded South Fork retained the rights to further develop The Villas and that Citizens could foreclose on its security interest in such rights. A written order consistent with its reasoning was entered on February 15, 2011, directing the Master Commissioner to include the future development rights in the judicial sale of South Fork's property. The Association's subsequent motion to alter, amend or vacate was generally denied based on the trial court's earlier rulings on similar matters in this action and in the Developer Action. This appeal followed.

The Association presents several arguments in its quest for reversal. These arguments are based on the Association's flawed interpretation of the Master Deed for The Villas which posits that South Fork's ability to continue development activities at The Villas expired in 2006. These contentions are practically identical to those presented—and rejected—in the appeal from the Developer Action. The Association's arguments here represent an impermissible collateral attack on the judgment rendered in the Developer Action, *see Smith v. Decker*, 374 S.W.2d 487, 490 (Ky. 1964), and must be barred under the doctrine of collateral estoppel. As a panel of this Court recently stated in *Price v. Yellow Cab Co. of Louisville*, 365, S.W.3d 588, 591-92 (Ky. App. 2012), collateral estoppel, a closely related doctrine to *res judicata*, applies to issues actually litigated in a prior action where there is

identity of parties, identity of issues, and the prior action was actually tried on the merits.

The issue of future development rights was extensively litigated in the Developer Action. Both the Association and Citizens—among numerous others including South Fork—were parties to that action. South Fork’s right to conduct future development activities<sup>2</sup> was conclusively resolved in the Developer Action, and the trial court’s determination has now been affirmed by this Court. The issue simply cannot be reevaluated under these circumstances. The trial court’s reliance on its earlier, correct determination in the related suit on this issue was proper and the Association is estopped from again challenging the adverse ruling in the Developer Action by attempting to relitigate the same issues in this foreclosure action.

For the foregoing reasons, the judgment of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Michael C. Merrick  
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BRIEF FOR APPELLEE:

John E. Hinkel, Jr.  
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<sup>2</sup> As mentioned in the Developer Action, based on the plain language of the Master Deed, South Fork’s future development rights inure to the benefit of its successors and assigns.

