

NOT DESIGNATED FOR PUBLICATION

AMMON L. MILLER, JR.	*	NO. 2008-CA-0714
VERSUS	*	
DESIREE' CHARBONNET	*	COURT OF APPEAL
AND THE HENDERSON	*	FOURTH CIRCUIT
CONDOMINIUM	*	
ASSOCIATION, INC.		STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2007-12978, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

Judge Patricia Rivet Murray

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby, Judge Edwin A. Lombard)

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CONDOMINIUM ASSOCIATION, INC.

AFFIRMED

The plaintiff, Ammon Miller, appeals the trial court's denial of his petition for mandamus. For the reasons that follow, we affirm.

FACTS AND PROCEEDINGS BELOW

Mr. Miller owns condominium unit number 312 in the Henderson Condominiums, located at 700 Commerce Street in New Orleans. On February 17, 2007, the Henderson Condominium Association, Inc. ["HCA"] served Mr. Miller with a sworn detailed statement listing past due and delinquent fees owed to it by Mr. Miller, and on March 26, 2007, HCA filed a lien against Mr. Miller's condominium in the Office of the Recorder of Mortgages for Orleans Parish. On September 20, 2007, Mr. Miller filed the instant petition for mandamus against HCA and Desiree Charbonnet, in her capacity as Recorder of Mortgages for Orleans Parish, seeking to have the lien cancelled on account of HCA's alleged failure to comply with the requirements of La. R.S. 9:1123.115. The matter was heard by the trial court on November 14, 2008. On February 26, 2008, the court rendered judgment denying the plaintiff relief on his petition for mandamus. From this judgment the plaintiff now appeals.

ISSUES

The plaintiff raises three issues on appeal. In the first two, he contends the trial court should have ordered the Recorder of Mortgages to cancel the lien because:

- (1) HCA failed to comply with the procedural requirements of the applicable statute, La. R.S. 9:1123.115; and/or
- (2) There are substantive errors in the lien filed by HCA.

Additionally, the plaintiff argues on appeal that the trial court erred by failing to award him attorney fees.

LAW AND DISCUSSION

Mandamus is an extraordinary remedy, to be applied where ordinary means fail to afford adequate relief. *Hoag v. State*, 04-0857, p.6 (La. 12/1/04), 889 So.2d 1019, 1023. La. C.C.P. article 3862 provides, in pertinent part: “A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice.”

La. C.C.P. article 3863 states that a writ of mandamus may be issued “to a public officer to compel the performance of a ministerial duty required by law, or to a former officer or his heirs to compel the delivery of the papers and effects of the office to his successor.” The Louisiana Supreme Court has held that ministerial duties are those in which no element of discretion is left to the public officer charged with performing them. *Hoag*, 04-0857. p.7, 889 So.2d at 1024. As the Supreme Court has explained:

A ministerial duty is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law. If a public officer is vested with any element of discretion, mandamus will not lie.

Id. (Citations omitted).

La. R.S. 9:1123.115, which is part of the Louisiana Condominium Act, provides a procedure by which a condominium association may assert a privilege on a condominium for unpaid fees assessed by the association. This court has previously held that a condominium association's failure to comply with the statute entitles the condominium owner to mandamus relief compelling cancellation of the lien that the association obtained on the owner's property.¹ In the instant case, the plaintiff contends that HCA failed to comply with the statute.

La. R.S. 9:1123.115 provides, in pertinent part:

A. (1) The association shall have a privilege on a condominium parcel for all unpaid or accelerated sums assessed by the association and interest thereon at the rate provided in the condominium declaration or, in the absence thereof, at the legal interest rate. This privilege shall also secure reasonable attorney fees incurred by the association incident to the collection of the assessment or enforcement of the privilege. Further, if the unit owner fails to timely pay the assessments for common elements for a period of six months or more during any eight-month period and notice to the delinquent unit owner is provided as set forth in Paragraph (3) of this Subsection, the association may accelerate the assessment on the common elements for a twelve-month period and file a privilege for the accelerated sums. Assessments for common elements are those assessments that are collected on a regular basis by the association for routine expenditures associated with the property.

(2) To be preserved, the privilege shall be evidenced by a claim of privilege, signed and verified by affidavit of an officer or agent of the association, and shall be filed for registry in the mortgage records in the parish in which the condominium is located. The claim of privilege shall include a description of the condominium

¹ In *Miller v. Charbonnet*, 07-0646 (La. App. 4 Cir. 12/5/07), 972 So.2d 1237, which involved a prior lien filed by HCA against the plaintiff herein, we found that mandamus was appropriate because HCA admitted it had failed to serve upon Mr. Miller a sworn detailed statement of its claim at least seven days prior to filing the lien, as is required by Section A (3) of the statute.

parcel, the name of its record owner, the amount of delinquent or accelerated assessment, and the date on which said assessment became delinquent.

(3) The association shall, at least seven days prior to the filing for registry of the privilege, serve upon the delinquent unit owner a sworn detailed statement of its claim for the delinquent or accelerated assessment that includes the date said assessment became delinquent or accelerated, which service shall be effected by personal service, or registered or certified mail.

In his first argument on appeal, the plaintiff contends HCA failed to comply with this statute because HCA's claim and sworn detailed statement lacks specificity regarding Mr. Miller's prior payments, i.e., the sworn detailed statement treats all the payments he made as one lump sum rather than indicating the date upon which each payment was received.² However, the statute does not require that the sworn detailed statement include any information about the payments made by the condominium owner—only the amount of the delinquent or accelerated assessment, and the date said assessment became accelerated or delinquent. Our review of the claim and sworn detailed statement reveals that they are in compliance with the statute, which requires the inclusion of only four items of information: a description of the condominium parcel, the name of the record owner, the amount of the delinquent assessment and the date on which said assessment became delinquent. Because HCA has complied with the statute, we reject this assignment of error.

The plaintiff next argues that the lien filed is “substantively” defective in

² We note that the claim and sworn detailed statement, which Mr. Miller's petition reflects are attached as exhibits thereto, are not contained in the record but are attached to Mr. Miller's appellant brief. Mr. Miller contends that the exhibits to the petition were attached, formed a part of the district court record, were discussed at the hearing, and presumably were considered by the trial court in rendering its decision. Defendants do not dispute that these exhibits were considered by the trial court, but argue that because they were not introduced as evidence at the hearing, this court is precluded from considering them. We disagree. For purposes of judicial economy, we have assumed that the claim and sworn detailed statement were considered by the trial court, and we have reviewed them on appeal.

that the delinquent amount is not correct. In support of this argument, the plaintiff cites certain documents, some of which he attached as exhibits to his petition and others of which were not before the trial court.³

We note that La. R.S. 9:1123.115 does not provide a mechanism for challenging the accuracy of the privilege asserted by the condominium association. However, 9:1123.115 (B) states that a claim of privilege recorded under subsection A of the statute is preserved for one year unless during that year a notice of filing suit is also recorded, in which case the lien remains until the court or the claimant authorizes the Recorder of Mortgages to cancel it. Thus, the statute contemplates the filing of an ordinary suit during which any substantive defenses the condominium owner may have can be raised.

Mandamus is limited to cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice. La. C.C. P. art. 3862. The plaintiff has made no showing that the substantive issues he asserts cannot be litigated in an ordinary proceeding; nor has he shown why the delay in obtaining such relief would be unjust in his particular circumstance. Instead, he argues that the remedy contemplated by the statute—the filing of an ordinary lawsuit—is inequitable and violates public policy. We reject this assertion.

The plaintiff's final argument on appeal is that the trial court erred by failing to award him attorney fees. The statute does not provide for the awarding of attorney fees, and there is no indication that the plaintiff raised this issue in the

³ This court denied the plaintiff's motion to supplement the record on appeal with documents that were not part of the trial court record.

mandamus proceeding before the trial court or that the trial court ruled upon it.

We therefore decline to consider this issue.

CONCLUSION

Having found that HCA has complied with the applicable statute, we conclude that the trial court did not err by denying relief on the plaintiff's petition for mandamus. Accordingly, we affirm the district court's judgment.

AFFIRMED