HOME BANK	*	**NO. 2017-CA-0281**
VERSUS	*	
		COURT OF APPEAL
JOSEPH C. MARCELLO, INDEPENDENT	*	**FOURTH CIRCUIT**
ADMINISTRATOR OF THE SUCCESSION OF	*	**STATE OF LOUISIANA**
SALVADORE JOSEPH SEGRETO	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-03385, DIVISION "J"
Honorable Paula A. Brown, Judge
* * * * * *

Judge Regina Bartholomew Woods
* * * * * *

(Court composed of Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins, Judge Regina Bartholomew Woods)

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AFFIRMED
October 18 , 2017

This civil appeal involves the determination of whether the 2016 amendment to La. R.S. 9:1123.115 should be applied retroactively or prospectively. The application of the amendment became an issue when a condominium association filed a lien against a condominium for unpaid dues and fees owed by the owner of the condominium and when a banking institution filed a lien against the same condominium for unpaid promissory note obligations pursuant to a collateral mortgage executed by the owner. The trial court ruled that the amendment to La. R.S. 9:1123.155 is substantive in nature and therefore is to be applied prospectively only; thereby cancelling the lien filed by the condominium association. It is from this judgment that the condominium association appeals. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Home Bank was the holder and owner of a promissory note ("the Note") executed by Salvador J. Segreto ("Mr. Segreto"), dated December 27, 2006. The Note was in the amount of $235,000.00, with a maturity date of January 1, 2017.

The Note was modified by a loan modification agreement with Home Bank, dated December 21, 2012, with the maturity date remaining as January 1, 2017. The principal balance of the Note was $218,772.84. The loan modification agreement was secured by a mortgage encumbering Mr. Segreto's residence—condominium Unit 1A of the Lafayette Oaks Condominium located at 1436 Jackson Avenue in New Orleans, Louisiana.[1] Lafayette Oaks Condominium Association, Inc.—Appellant herein ("the Association"), manages the condominium.

On May 24, 2012, the Association filed a lien in the amount of $16,779.16, plus costs, attorney's fees and interest due incurred as a result of past due condominium dues. The lien was recorded in Orleans Parish.[2] Mr. Segreto died and a succession was opened on his behalf in Orleans Parish. On December 15, 2015, Joseph C. Marcello was named as the independent administrator of the succession.[3] Subsequent to Mr. Segreto's death, condominium association fees continued to accrue, thus by October 2016, Mr. Segreto's estate owed a total of $40,297.38 to the Association.

In addition to the above-referenced lien, on December 4, 2012, Bank of Louisiana ("Appellee"), the holder of a collateral mortgage note[4] in the amount of $300,000.00, which was executed by Mr. Segreto prior to his death, filed a lien and recorded it in Orleans Parish.

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[1] It was recorded in the mortgage records of Orleans Parish under instrument number 881146.

[2] Notarial Archive Instrument Number 12-20713.

[3] The Succession of Salvadore Joseph Segreto was filed under Docket No. 15-11829 in the Orleans Parish Civil District Court.

[4] This mortgage is recorded in Orleans parish at MIN No. 1108559.

On April 5, 2016, Home Bank filed a Petition for Executory Process to foreclose on the outstanding mortgage indebtedness. On April 15, 2016, Home Bank filed a Writ of Seizure and Sale of the condominium, via sheriff sale. On August 11, 2016, Appellee acquired the property for the adjudication price of $380,000.00. Home Bank, the first mortgage holder, was paid all of the indebtedness due to it by Mr. Segreto's estate. The remaining funds, approximately $173,358.00, were placed into the registry of the Civil District Court for the Parish of Orleans.

On September 7, 2016, the Association filed a Motion and Order for Ranking of Liens and asserted that the amount owed under its 2012 lien was superior in rank to Appellee's lien. Appellee's asserted that the Association's lien had prescribed and should be stricken. Accordingly, on September 16, 2016, Appellee filed a Petition for Writ of Mandamus and Rule to Show cause seeking the Clerk of Court to cancel and erase from the mortgage record the Affidavit and Statement of Lien and Privilege of Claim filed by the Association.

At a hearing held on December 19, 2016, the district court granted Appellee's Petition for Writ of Mandamus and Rule to Show Cause. The district court ruled that the 2016 amendment to La. R.S. 9:1123.115 is substantive and therefore must be applied prospectively. The trial court further ordered the Clerk of Court for Orleans Parish to cancel and erase from the mortgage records the Association's Affidavit and Statement of Lien and Privilege of Claim. It is from this judgment that the Association now appeals.

DISCUSSION

The Association's sole assignment of error is whether the district court erred as a matter of law by applying the 2016 amendment to La. R.S. 9:1123.115 prospectively, thereby cancelling its lien based on prescription.

Standard of Review

This case solely involves the interpretation of a legislative amendment. This Court has stated that with regard to questions of law an appellate court must review them *de novo* and render judgment on the record. *Williams v. Opportunity Homes Limited Partnership,* 2016-1185, p. 4 (La. App. 4 Cir. 05/10/17), 220 So.3d 188, 191 (citations omitted). Appellate review of questions of law is simply a determination of whether the district court's application of the law was legally correct or legally incorrect. *Id.*

Analysis

At issue in this case is the 2016 amendment to La. R.S. 9:1123.115. Prior to August 1, 2016, La. R.S. 9:1123.115(B) read in pertinent part, as follows: "[a] claim of privilege recorded, as set forth in Subsection A of this Section, shall preserve the privilege against the condominium parcel for a period of ***one year from the date of recordation."*** (Emphasis added). However, effective August 1, 2016, the Louisiana Legislature amended the aforesaid portion of the statute, which now reads: "[a] claim of privilege recorded, as set forth in Subsection A of this Section, shall preserve the privilege against the condominium parcel for a period of

five years from the date of recordation." (Emphasis added).[5] This amendment became the central issue in this matter before the district court. The Association

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[5] La. R.S. 9:1123.115 currently reads as follows:

> A. (1) The association shall have a privilege on a condominium parcel for all unpaid or accelerated sums assessed by the association, any fines or late fees in excess of two hundred fifty dollars, 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 three 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.
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> (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 parcel, the name of its record owner, the amount of delinquent or accelerated assessment, the date on which the assessment became delinquent, and any fines or late fees assessed in excess of two hundred fifty dollars.
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> (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.
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> (4) If the condominium association files a lien pursuant to this Section and the lien is for an amount of the assessment or dues secured by the privilege allowed pursuant hereto that is not owed, in whole or in part, and any owner or interest holder of the condominium unit affected by the privilege files suit to obtain a complete or partial release of such lien or privilege, then in such event the condominium association filing the lien shall be liable to the owner or interest holder in the condominium for the expenses of obtaining the release, in whole or in part, including reasonable attorney fees and all costs associated therewith.
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> B. A claim of privilege recorded, as set forth in Subsection A of this Section, shall preserve the privilege against the condominium parcel for a period of ***five years from the date of recordation***. The effect of recordation shall cease and the privilege preserved by this recordation shall perempt unless a notice of filing of suit, giving the name of the court, the title and number of the proceedings and date of filing, a description of the condominium parcel and the name of the unit owner, on the claim is recorded within five years from the date of the recordation of the inscription of the claim. Such notice of filing suit shall preserve the privilege until the court in which the suit is filed shall order the cancellation of the inscription of the claim and the notice of filing of suit on the claim or until the claimant authorizes the clerk of court or recorder of mortgages to cancel the inscriptions.

argued that its previously filed lien should not have been canceled by the district court because when it filed to enforce the lien, it was within the applicable prescriptive period of five years contained within the 2016 amendment. Contrarily, Appellee argued that the amendment should not be applied retroactively because it affected substantive rights; and further, that the Association's lien had already prescribed by the time the amendment was passed; and, thus, the amendment could not revive an already prescribed claim.

Retroactivity of statutes is addressed by La. R.S. 1:2, which provides that "[n]o Section of the Revised Statutes is retroactive unless it is expressly so stated." La. C.C. art. 6, which should be read *in para materia* with La. R.S. 1:2, states the following: "[i]n the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary." *See Landry v. Baton Rouge Police Dep't*, 2008-2289, pp. 8-9 (La. App. 1 Cir. 5/8/09), 17 So.3d 991, 996. (citing *St. Paul Fire & Marine Insurance Company v. Smith,* 609 So.2d 809, 816 (La.1992)).

When the Legislature amended La. R.S. 9:1123.115(B), it did not expressly state that the amendment should be given retroactive effect. Notwithstanding that

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> C. A privilege under this Section is superior to all other liens and encumbrances on a unit except (1) privileges, mortgages, and encumbrances recorded before the recordation of the declaration, (2) privileges, mortgages, and encumbrances on the unit recorded before the recordation of the privilege as provided in Subsection B of this Section, (3) immovable property taxes, and (4) governmental assessments in which the unit is specifically described.
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> (Emphasis added).

fact, in light of La. C.C. art. 6, this Court must still employ an examination of the amendment to determine whether it should be applied prospectively or retroactively.

The court in *Landry* provided the following analysis:

> In determining whether a newly enacted provision is to be applied prospectively only, or may also be retroactive, La. C.C. art. 6 requires a two-fold inquiry. First, the court must determine whether the amendment to the statute expresses legislative intent regarding retroactive or prospective application. *Keith v. U.S. Fidelity & Guaranty Company,* 96–2075 (La.5/9/97), 694 So.2d 180, 183. Second, if no such intent is expressed, the enactment must be classified as substantive, procedural, or interpretive. *Keith,* 694 So.2d at 183.
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> Furthermore, even where the legislature has expressed its intent to give a law retroactive effect, the law may not be applied retroactively if doing so would impair contractual obligations or disturb vested rights. If it does so, then in spite of legislative pronouncements to the contrary, the law is substantive rather than procedural or interpretive. *State Farm Mutual Automobile Insurance Company v. Noyes,* 2002–1876 (La. App. 1st Cir.2/23/04), 872 So.2d 1133, 1138.

Landry, 2008-2289, pp. 8-9, 17 So.3d at 997.

In classifying enactments by the Legislature, courts must consider the following:

> Procedural laws prescribe a method for enforcing a previously existing substantive right and relate to the form of the proceeding or the operation of the laws. *Keith,* 694 So.2d at 183. Substantive laws either establish new rules, rights, and duties or change existing ones. Interpretive laws, on the other hand, do not create new rules, but merely establish the meaning that the interpretive statute had from the time of its initial enactment. It is the original statute, not the interpretive one, that establishes the rights and duties. *St. Paul Fire & Marine Insurance Company,* 609 So.2d at 817.

Landry, 2008-2289 pp. 9-10, 17 So. 3d at 997.

The Louisiana Supreme Court has held that prescriptive periods relate to the remedy and therefore are treated as procedural laws and applied retroactively. *Chance v. Am. Honda Motor Co., Inc.*, 635 So.2d 177, 178 (La. 1994) (citing *Lott v. Haley,* 370 So.2d 521, 523 (La. 1979)). However, "[t]his jurisprudential rule is subject to the exception that procedural and remedial laws are not accorded retroactive effect where such retroactivity would operate unconstitutionally to disturb vested rights." *Lott v. Haley*, 370 So.2d 521, 523 (La. 1979) (citing *Orleans Parish School Board v. Pittman Construction Co.*, 261 La. 665, 260 So.2d 661 (1972); *Succession of Lambert*, 210 La. 636, 28 So.2d 1 (1946); *Shreveport Long Leaf Lumber Co. v. Wilson*, 195 La. 814, 197 So. 566 (1940)).

Here, as in *Chance,* we are presented with a different question: does the retroactive application referred to in La. C.C. art. 6 extend to revive a previously time-barred cause of action. In *Chance*, the Louisiana Supreme Court provided the following analysis:

> Although prescriptive statutes are generally procedural in nature, the revival of an already prescribed claim presents additional concerns. For while the defendant does not acquire anything during the running of the prescriptive period, once the time period has elapsed, the legislature grants the defendant the right to plead the exception of prescription in order to defeat the plaintiff's claim. La. C.C.P. arts. 927 & 934. Because the defendant acquires the right to plead the exception of prescription, a change in that right constitutes a substantive change in the law as applied to the defendant. *See St. Paul Fire & Marine Ins. Co. v. Smith,* 609 So.2d 809, 817 (La.1992) ("Substantive laws either establish new rules, rights, and duties or change existing ones."); *Thomassie v. Savoie,* 581 So.2d 1031, 1034 (La. App. 1st Cir.1991) ("[I]f a statute which is remedial or procedural also has the effect of making a change in the substantive law, it must be construed to operate prospectively

> only."). Thus, were we to interpret the amendment at issue to allow the revival of prescribed causes of action, the substantive rights of the defendant would be materially changed because he would be stripped of this acquired defense. Guided by the principles established in article 6, we require, at the very least, a clear and unequivocal expression of intent by the legislature for such an "extreme exercise of legislative power." We do not believe this amendment contains a clear expression of legislative intent to revive prescribed claims. The language used does not contain any reference to retroactive application, much less revival of prescribed claims.

Chance, 635 So.2d at 178-79.

In applying the aforementioned jurisprudential principles to the present matter, we conclude that the 2016 amendment should be applied prospectively only. On May 24, 2012, the Association recorded an Affidavit of Lien and Privilege of Claim pursuant to La. R.S. 9:1123.115 against the condominium owned by Mr. Segreto. At the time of filing, La R.S. 9:1123.115 provided a one (1) year prescriptive period in order to preserve a filed lien. Because the Association failed to file suit or *lis pendens* within one year of filing the lien, its lien prescribed on May 24, 2013. On May 25, 2013, the Appellee acquired the right to plead prescription. The 2016 amendment to La. R.S. 91123.115 has no effect on the Association's lien because its lien prescribed three (3) years before the enactment of the amendment. Further, the Legislature did not expressly state that the amendment should be given retroactive effect. In order to revive the Association's lien, through making the amendment retroactive, this Court would strip the Appellee of its vested right to plead prescription thus violating the precepts identified by the Louisiana Supreme Court in *Chance. Id.* As such, we find that the

district court correctly ruled that the amendment in this case should have been interpreted to apply prospectively.

DECREE

For the aforementioned reasons, we affirm the ruling of the district court.

AFFIRMED