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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0623**

Foxborough Place Condominium Association, Inc.,
Appellant,

vs.

Lori J. Mierva,
Respondent,

JDB Mortgage, Inc.,
Respondent,

TCF National Bank,
Respondent,

XYZ Corporation, et al.,
Defendants.

**Filed December 30, 2013
Affirmed
Kirk, Judge**

Washington County District Court
File No. 82-CV-12-1865

Phaedra J. Howard, Hellmuth & Johnson, PLLC, Edina, Minnesota (for appellant)

Lori J. Mierva, Oakdale, Minnesota (pro se respondent)

JDB Mortgage, Inc., Apple Valley, Minnesota (respondent)

Wyatt S. Partridge, Michael W. Haag, Foley & Mansfield, PLLP, Minneapolis,
Minnesota (for respondent TCF National Bank)

Considered and decided by Cleary, Chief Judge; Kalitowski, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant Foxborough Place Condominium Association, Inc. argues that the district court erred in (1) failing to find it was a bona fide purchaser entitled to protection under the Minnesota Recording Act; (2) holding respondent TCF National Bank's mortgage to be the first mortgage on the property; (3) extinguishing a third-party lender's mortgage; and (4) denying, in part, its motion for attorney fees. We affirm.

DECISION

I.

“On appeal from summary judgment, we must review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law.” *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted). Because there are no material facts in dispute, the district court's application of law is reviewed de novo. *Leamington Co. v. Nonprofits' Ins. Ass'n*, 615 N.W.2d 349, 353 (Minn. 2000). As a threshold issue, this court must determine whether the district court correctly determined that Foxborough Place Condominium Association, Inc. (Foxborough) was not a bona fide purchaser.

In 1996, respondent Laura Mierva purchased a condominium in the Foxborough Place Condominiums in Washington County, Minnesota. Foxborough is a common interest community association that is responsible for the maintenance and management of the condominium complex. Both Foxborough and Mierva, as fee owner, are governed by the Minnesota Common Interest Ownership Act (MCIOA) under Minnesota Statutes chapter 515B. The property is also subject to the condominium's declaration, bylaws, rules, and regulations. The declaration requires Mierva to pay monthly assessments to Foxborough.

Mierva obtained a mortgage on the condominium on February 6, 2006, through respondent JDB Mortgage (JDB). JDB recorded the mortgage on February 28, 2006, in Washington County. In January 2008, Mierva refinanced the condominium for \$88,000 through TCF National Bank (TCF). TCF sent JDB a check for \$13,415.77 in satisfaction of JDB's mortgage. While TCF promptly recorded its mortgage on the property that same month, JDB failed to record the satisfaction of its mortgage.

On March 7, 2012, Foxborough recorded a lien on Mierva's condominium for unpaid assessments and late charges. When Foxborough recorded its assessment lien, the record on the property reflected JDB's mortgage as the senior mortgage, followed by Foxborough's lien, and TCF's mortgage in the third position. When Foxborough recorded its lien, it did not know that TCF had paid off the JDB mortgage in 2008. On March 29, 2012, Foxborough initiated an action to foreclose on Mierva's property and recorded a notice of lis pendens. Despite TCF's repeated requests, JDB never recorded the satisfaction of its mortgage.

The parties filed cross motions for summary judgment in the foreclosure action. On February 11, 2013, the district court granted Foxborough's request for a judicial foreclosure against Mierva's property. The district court held that TCF's payment to JDB extinguished JDB's mortgage as a matter of law and TCF's mortgage was the first mortgage on the property under the MCIOA. The district court also found that Foxborough was not a good-faith purchaser without notice because it knew that it could initiate a judicial foreclosure on Mierva's property for unpaid assessments by virtue of the condominium's declaration and MCIOA.

Foxborough argues that its assessment lien should have priority over the TCF mortgage because it is a bona fide purchaser entitled to protection under the Minnesota Recording Act. Foxborough contends it became a bona fide purchaser on March 7, 2012, when it recorded its assessment lien and had no knowledge that the JDB mortgage had been satisfied.

Under the Minnesota Recording Act, a bona fide purchaser must purchase his or her interest in property "in good faith and for a valuable consideration . . . without actual, implied, or constructive notice of inconsistent outstanding rights of others." *Anderson v. Graham Inv. Co.*, 263 N.W.2d 382, 384 (Minn. 1978). A purchaser is defined as "every person to whom any estate or interest in real estate is conveyed for a valuable consideration and every assignee of a mortgage, lease, or other conditional estate." Minn. Stat. § 507.01 (2012).

In *Washington Mut. v. Elfelt*, this court considered a similar issue involving the relative priority of three separate encumbrances on a condominium. 756 N.W.2d 501

(Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). In *Elfelt*, a homeowner’s association executed and recorded a lien against a condominium owner for unpaid assessments. *Id.* at 504. The association later foreclosed on the lien and was the highest bidder at the sheriff’s sale. *Id.* This court held that “the [homeowner’s] [a]ssociation became a purchaser under Minn. Stat. § 507.34 by tendering the highest bid at its foreclosure sale” and was entitled to protection under the Minnesota Recording Act because it foreclosed the lien “based upon the priority reflected in the county recorder’s office.” *Id.* at 508. Unlike in *Elfelt*, Foxborough cannot be considered a purchaser under the Minnesota Recording Act because it did not purchase the property at a foreclosure sale; instead it merely recorded its lien for unpaid assessments.

Because we conclude that Foxborough failed to establish that it was a purchaser entitled to protection under the Minnesota Recording Act, we need not address the merits of Foxborough’s remaining issues, apart from attorney fees.

II.

“We will not reverse the district court’s decision on attorney fees absent an abuse of discretion.” *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). “Attorney fees are recoverable if specifically authorized by contract or statute.” *Van Vickle v. C.W. Scheurer & Sons, Inc.*, 556 N.W.2d 238, 242 (Minn. App. 1996), *review denied* (Minn. Mar. 18, 1997).

Foxborough argues that the district court abused its discretion when it failed to award all of its attorney fees. The district court limited Foxborough’s attorney fees to reasonable and necessary work regarding its claims against Mierva.

We conclude that the district court did not err when it found it would be unjust to require Mierva to pay attorney fees arising from the dispute between Foxborough and TCF. Both MCIOA and section 8.3 of Foxborough's amended declaration allow for the recovery of attorney fees incurred in connection with the collection of assessments. Minn. Stat. § 515B.3-115(e)(4). The district court properly concluded that Foxborough's attorney fees must be limited only to work incurred collecting Mierva's unpaid assessments.

Affirmed.