

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-13-00800-CV

Marina Village Lakeway Partners, Ltd., Appellant

v.

Lakeway Marina Village Condominium Association, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 353RD JUDICIAL DISTRICT
NO. D-1-GN-13-002241, HONORABLE TIM SULAK, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Marina Village Lakeway Partners, Ltd., (the Partnership) developer of a luxury condominium project on Lake Travis, challenges the summary judgment granted in favor of appellee Lakeway Marina Village Condominium Association. The Association contends the appeal is moot. We agree and will dismiss the appeal.

The Partnership sued the Association for declaratory judgment that the Partnership was entitled to construct the final three buildings of the seven buildings contemplated in the condominium's declaration after the Association had asserted that the Partnership's right to construct the three remaining buildings had expired under the terms of the declaration. The district court granted summary judgment for the Association on the ground that the Partnership no longer had the authority to finish the development under the condominium's declaration.

While the Partnership's appeal from that judgment was pending, Travis County obtained a judgment and decree of sale against the Partnership for unpaid property taxes on the unbuilt units owned by the Partnership and, on August 11, 2015, foreclosed on those units. The Association contends that mooted the Partnership's appeal, and we agree. Under the Uniform Condominium Act, the county's foreclosure of the Partnership's units terminated any special declarant rights the Partnership may have had under the declaration. *See* Tex. Prop. Code § 82.104(d)(1) ("On foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust . . . of all units and other real property in a condominium owned by a declarant[,], the declarant ceases to have any special declarant rights."). Relatedly, because it no longer owns any units, the Partnership cannot assert unit-owner improvement rights. Therefore, the Partnership's appeal is moot. *See Pinnacle Gas Treating, Inc. v. Read*, 104 S.W.3d 544, 545 (Tex. 2003) (noting that a case becomes moot if a controversy ceases to exist between parties at any stage of the legal proceedings, including the appeal).

We grant the Association's motion and dismiss this appeal.

Jeff Rose, Chief Justice

Before Chief Justice Rose and Justice Goodwin;
Former Chief Justice Jones not participating

Dismissed on Appellee's Motion

Filed: July 8, 2016