



Courts May Not Run Afoul of Rules of Civil Procedure in Granting Possession

McKenna v. Camino Real Village Association, No. 4D07-4331, Fla. App. Ct., April 8, 2009

Assessments/State and Local Legislation and Regulations: A Florida court lacked jurisdiction to enter an order while appeal from a previous order was pending.

Cheryl McKenna failed to pay assessment fees to the Camino Real Village Condominium Association in Boca Raton, Fla. The association filed a complaint for foreclosure and damages against her. The trial court granted summary judgment in favor of the association, but the judgment was reversed by the appeals court. On remand, the association amended its complaint to add Real Estate Depot, Inc. ("RED"), an entity that acquired a deed from McKenna in 2003, and the court entered final judgment of foreclosure against RED, but denied the motion as to McKenna.

At the foreclosure sale, JPL Properties, Inc. ("JPL") purchased RED's interest in the condominium. The court clerk received the funds from the foreclosure sale and disbursed the amount owed to the association, in full satisfaction of the final judgment, and issued a certificate of sale and title to JPL.

The court denied JPL's first motion for writ of possession without prejudice, but issued an order on Aug. 13, 2007, requiring McKenna to: (i) file a notice of assessment amounts due and owing, and (ii) deposit that sum and the amount paid by JPL at the foreclosure sale into the court registry within 10 days. McKenna appealed the order on Sept. 12, 2007, but never complied. JPL then filed an amended motion seeking an order to show cause or for default and for writ of possession due to McKenna's non-compliance.

On Oct. 10, 2007, while the appeal of the August order was pending, the trial court entered a judgment striking McKenna's pleadings, entering a default, and directing the issuance of a writ of possession in favor of JPL. The order (i) took judicial notice that McKenna did not file a notice with the court of the sums due to the association; (ii) found that McKenna had failed to deposit that amount along with the amount paid by JPL at the foreclosure sale into the court registry; (iii) found that the association's lien was superior to McKenna's rights and RED's rights; (iv) found JPL to be a bona fide purchaser for value; and (v) ordered the clerk to issue a writ of possession in favor of JPL within 30 days from the date of the order. McKenna appealed.

The appeals court reversed the trial court's ruling, finding that a lower court may not render a final order disposing of a cause pending judicial review of a non-final order. In this case, the August order was not final; it required McKenna to deposit monies into the court's registry, but did not resolve the issues between her and JPL. Thus, while the appeal from the August order was pending, the trial court was prohibited from rendering a final order disposing of the cause.

The October order was a final order because it entered a default judgment against the owner and ordered the issuance of a writ of possession. It finally resolved the issues between McKenna and JPL. That was true notwithstanding the fact that the association still had a claim pending against McKenna in trial court. Florida case law provides that when it is obvious that a separate cause of action is pleaded that is not interdependent with other pleaded claims, it should be appealable if dismissed with finality at trial level and not delayed of appeal because other claims between the parties are pending. By entering a final order in favor of JPL, the trial court ran afoul of the rules of civil procedure. The appeals court, therefore, reversed the Oct. 10, 2007, order and remanded the case for further proceedings.

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