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Aventura Management, LLC v. Spiaggia Ocean Condominium Association: Condominium Associations Beware

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*AVENTURA MANAGEMENT, LLC v. SPIAGGIA OCEAN
CONDOMINIUM ASSOCIATION:
CONDOMINIUM ASSOCIATIONS BEWARE*

*Aventura Management, LLC v. Spiaggia Ocean Condominium
Association, Inc.*, 105 So. 3d 637 (Fla. Dist. Ct. App. 2013)

*William C. Matthews**

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INTRODUCTION

In late January 2013, the Third District Court of Appeal sent shockwaves throughout the real estate community with regards to condominium associations’ rights as unit owners. In *Aventura Management, LLC v. Spiaggia Ocean Condominium Association*¹

* J.D., University of Florida Levin College of Law, 2014; B.A., Economics & Anthropology, Emory University, 2011. I would like to thank the *Florida Law Review* for everything it has given me during my final two years of law school. I will cherish all the friends I have made through this great organization and those that have helped me become a better writer. I would like to thank Lisa Renée Fassett for her continued love and support and Professor Dennis Eisinger for helping me pick this topic. Lastly, I would like to thank my family for always helping me out along the way.

1. 105 So. 3d 637 (Fla. Dist. Ct. App. 2013).

(*Spiaggia*), the appellate court interpreted Florida Statute § 718.116² in an unprecedented way. The court held that if a condominium association takes title to a unit before the bank forecloses on a defaulting unit owner, the association is jointly and severally liable for all past due assessments with the previous owner that came due, up to the time of transfer of title.³ Condominium associations across Florida⁴ became worried that the *Spiaggia* decision could spark a judicial trend that limits associations' ability to recoup delinquent assessment fees.⁵ Although the *Spiaggia* court likely ruled correctly from an appellate perspective, the outcome of the case is contrary to the legislative intent of § 718.116 and could have disastrous consequences for Florida condominium associations.

This Comment begins by explaining in great detail the facts and procedural posture of *Spiaggia* from the trial court to the appellate court level. Following the factual analysis, this Comment discusses the potential and actual effects of *Spiaggia* and looks to the legislative intent of § 718.116 to attempt to resolve the existing conflict. Finally, this Comment raises various issues that the Florida Legislature should address in reaction to the *Spiaggia* decision.

I. The Facts: Aventura Management, LLC v. Spiaggia Ocean Condominium Association

A. Trial Court Analysis

To understand why the *Spiaggia* decision may have profound effects on Florida condominium associations, it is first necessary to examine the dispute between Aventura and Spiaggia. In July 2008, Spiaggia initiated lien foreclosure proceedings against the owner of unit number 402 (Unit) because of past due assessments⁶ owed to Spiaggia Ocean Condominium Association.⁷ Accordingly, in July of 2009, Spiaggia

2. FLA. STAT. § 718.116 (2009).

3. *Spiaggia*, 105 So. 3d at 638.

4. Cf. James L. Oliver, *Beyond Consumer Protection: The Application of the Interstate Land Sales Full Disclosure Act to Condominium Sales*, 37 FLA. L. REV. 945, 945–46 (1985) (stating that Florida has consistently led the nation in condominium sales and modification of condominium law).

5. Roberto C. Blanch, *Condo Association Laws Need a Legislative Fix*, MIAMI HERALD (Mar. 3, 2013).

6. *Condo Assessments*, OWNACONDO, <http://www.ownacondo.com/Assessments.aspx> (last visited Mar. 7, 2014) (noting that “[c]ondo[minium] assessments, sometimes called association fees, are the payments made by condominium owners to cover the common expenses of the entire property,” which may include water charges, gas charges, building maintenance fees, and parking lot cleaning fees, among others).

7. *Spiaggia*, 105 So. 3d at 637.

acquired a default final judgment of foreclosure against the Unit owner and a foreclosure sale was scheduled for December 17, 2009.⁸ The holder of the first mortgage on the Unit, the Bank of New York (Bank), subsequently initiated foreclosure proceedings in September 2009 against the original owner of the Unit and named Spiaggia as a defendant.⁹

At the scheduled foreclosure sale, Spiaggia placed the sole bid to take title of the Unit subject to the first mortgage held by the Bank.¹⁰ Spiaggia had standing to take title because under § 718.116(5)(a), “[t]he association has a lien on each condominium parcel to secure the payment of assessments.”¹¹ Thus, apart from when there is an atypical condominium association agreement, almost every condominium association has a statutory lien on its units as a way to enforce payment of assessment fees that are levied on unit owners. No other parties submitted a bid, most likely because the first mortgage, “far exceeded the value of the Unit.”¹² Typically only parties with a direct interest in the sale are willing to bid for a title subject to a mortgage that is much greater than the value of the property. Third parties usually bid on an overvalued mortgage only if the party can acquire title through an inexpensive bid or if that party foresees the value of the property significantly appreciating over the duration of the mortgage.¹³ However, at the time of the foreclosure sale (December 2009), the Florida real estate market was collapsing and the Florida condominium market was especially feeling the effects.¹⁴ Thus, it is not surprising that Spiaggia took title to the Unit because although the mortgage was overvalued, Spiaggia had an interest in the property because it was a primary way for the condominium association to generate revenue through its assessment fees.

8. *Id.*

9. *Id.*

10. *Id.* at 638.

11. FLA. STAT. § 718.116(5)(a) (2009); *Spiaggia*, 105 So. 3d at 639.

12. *Spiaggia*, 105 So. 3d at 638.

13. Another reason a third party investor may try and bid on a mortgage that far exceeds the value of the property is if the purpose of the investment is long-term. What that typically means is the investor is planning on generating income from the property after the mortgage has been paid off, enough so to justify the cost of the overvalued mortgage.

14. Harriet Johnson Brackey, *South Florida's Condo Crisis: Prices at Seven-Year Lows*, PALM BEACH POST (Apr. 18, 2010, 9:29 AM), <http://www.palmbeachpost.com/news/business/real-estate/south-floridas-condo-crisis-prices-at-seven-year-l/nL6Mr/>; see also Prashant Gopal, *2009 Real Estate Forecast: Troubles Spread*, BLOOMBERG BUSINESSWEEK (Dec. 23, 2008), <http://www.businessweek.com/stories/2008-12-23/2009-real-estate-forecast-troubles-spreadbusinessweek-business-news-stock-market-and-financial-advice>.

After acquiring title, Spiaggia, like most condominium associations, leased the Unit in order to generate income.¹⁵ Put another way, Spiaggia attempted to mitigate its losses from a defaulting unit owner by temporarily acquiring title to the Unit and leasing the Unit as opposed to leaving the Unit vacant and not collecting any assessment fees. The Bank subsequently acquired a final judgment of foreclosure, and a second foreclosure sale was set for September 30, 2010.¹⁶ At the second foreclosure sale, Aventura was the successful bidder and acquired title to the Unit, “at which point [Spiaggia] relinquished its ownership interest.”¹⁷ After Aventura obtained title to the Unit, Spiaggia sought to recover from Aventura any “past due assessments, late fees, and interest that had accrued since the original owner defaulted.”¹⁸

Spiaggia asserted that Aventura was a third-party purchaser and thus was liable under § 718.116(1)(a) of Florida’s Condominium Act.¹⁹ Aventura claimed that contrary to Spiaggia’s interpretation of § 718.116(1)(a), it was not liable for past due assessments and countered that Spiaggia was responsible for the assessments owed by the original owner.²⁰ Aventura explained that because Spiaggia was the intervening owner between the original Unit owner and Aventura, a literal interpretation of the statute dictates that Spiaggia is “liable for all assessments which come due while he or she is the unit owner.”²¹

Seeking clarification, Aventura brought a declaratory judgment action asking for an interpretation of § 718.116(1)(a) and arguing that it

15. *Spiaggia*, 105 So. 3d at 638.

16. *Id.* The Bank in effect holds the “true” title to the unit and the condominium association holds a statutory lien on the unit to force unit owners to pay assessment fees. If the condominium association did not have a statutory lien, then Banks or mortgagees would be responsible for forcing owners to pay assessment fees—something that mortgagees have no direct interest in. Thus, without some legal method to force unit owners to pay assessment fees, the condominium association would have trouble maintaining the premises because garnering assessment fees would be quite difficult.

17. *Id.*

18. *Id.*

19. *Id.*; FLA. STAT. § 718.116(1)(a) (2009).

A unit owner, regardless of how his or her title has been acquired . . . is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

FLA. STAT. § 718.116(1)(a).

20. *Spiaggia*, 105 So. 3d at 638.

21. *Id.*; FLA. STAT. § 718.116(1)(a).

was liable only for assessments accruing after it took title to the Unit.²² After both parties moved for summary judgment, the trial court ruled in favor of Spiaggia, holding that Spiaggia's "lien did not merge with the certificate of title it was issued in connection with its foreclosure action."²³ The trial court further explained that Aventura was "liable for all amounts owed as of the date it was issued the certificate of title, including amounts accruing while [Spiaggia] held title, less all amounts received by [Spiaggia] through rents or other mitigation efforts."²⁴ The trial court concluded its holding by stating that contrary to the language of § 718.116(1)(a), Spiaggia was not jointly and severally liable to Aventura for any amount.²⁵

B. Appellate Court Analysis

1. Majority Opinion: "There's a New Sheriff in Town"

Aventura, feeling amiss because of the extra payments it was then legally responsible for, filed an appeal to the Third District Court of Appeal, arguing that the trial court incorrectly interpreted § 718.116(1)(a) and Spiaggia should be responsible for the past due assessments.²⁶ Shocking condominium associations across Florida, the appellate court agreed with Aventura and held Spiaggia jointly and severally liable for the past due assessments from the time the original Unit owner had title to when Spiaggia relinquished its ownership interest to Aventura.²⁷

The appellate court's reasoning focused on four issues: (1) *the interpretation of § 718.116(1)(a)*; (2) *whether Spiaggia's lien merged with its certificate of title issued at the December 2009 foreclosure sale*; (3) *if there is an exception to the statute when the condominium association itself is an owner*; and (4) *whether Aventura was on notice as to the amounts owed on the Unit*.²⁸

The appellate court began its analysis by interpreting the language of § 718.116(1)(a). It held that the language, "a unit owner is jointly and severally liable *with the previous owner* for all unpaid assessments that came due up to the time of transfer of title," was "plain" and should be

22. *Spiaggia*, 105 So. 3d at 638.

23. *Id.*

24. *Id.* at 638 n.3.

25. *Id.* at 638.

26. *Id.*

27. *Id.* at 639.

28. *Id.* at 638–40.

applied literally.²⁹ Thus, regardless of intent or who the previous owner actually was, as long as a person was by law the previous owner, that person should be held jointly and severally liable for all unpaid assessments up to the transfer of title.

After establishing its interpretation of the statute, the appellate court addressed Spiaggia's first argument that "its lien did not merge with the certificate of title issued at the December 2009 foreclosure sale."³⁰ Spiaggia presented case law that ruled merger exists only where the parties demonstrate a clear intent for merger to take place.³¹ However, the appellate court distinguished this case law by explaining that those cases did not involve mortgage foreclosure actions like the instant case.³² The court went further and presented case law that held a mortgage merges with a final judgment of foreclosure and is extinguished by the sale of the underlying property.³³ The court acknowledged that the lien survives the foreclosure as recognized by statute, but emphasized that the statute dictates "that the prior owner is jointly and severally liable with the current owner for all past due assessments up to the time of the transfer of title."³⁴

The third issue addressed by the appellate court was whether an exception should be read into § 718.116(1)(a) when the condominium association itself is an owner.³⁵ Spiaggia argued that § 718.116(1)(a) is one part of a "*general framework . . . designed to provide condominium associations with a mechanism for the preservation of their rights with regard to fee assessments.*"³⁶ Spiaggia then referenced § 718.116(5)(a) and § 718.116(6)(a) as textual support for its argument that "the sole purpose of this statutory scheme is to provide condominium associations with the means by which they can protect their interests, and that it would be absurd to apply the Statute in . . . a way [that

29. *Id.* at 638 (emphasis in original) (quoting FLA. STAT. § 718.116(1)(a) (2009)) (internal quotation marks omitted).

30. *Id.*

31. *Id.* (citing *Lassiter v. Kaufman*, 581 So. 2d 147, 148 (Fla. 1991) ("[A]n *intention* that a transaction operate as a merger is essential to a merger in equity.") (emphasis added) and *Contos v. Lipsky*, 433 So. 2d 1242, 1245 (Fla. Dist. Ct. App. 1983) ("In the absence of evidence showing an express or implied intent, we must presume that the lessee . . . intended the result most beneficial to her, that is, no merger.")).

32. *Id.* at 639.

33. *Id.* (citing *One 79th St. Estates, Inc. v. Am. Inv. Servs.*, 47 So. 3d 886, 889 (Fla. Dist. Ct. App. 2010) ("When a mortgage is foreclosed, the mortgage is 'merged' into the final judgment and loses its separate identity.") and *Nack Holdings, LLC v. Kalb*, 13 So. 3d 92, 94 n.2 (Fla. Dist. Ct. App. 2009) (same)).

34. *Id.*

35. *Id.*

36. *Id.* (emphasis added).

would] *deprive a condominium association of its right to collect past due assessments.*³⁷ The appellate court, however, did not agree with Spiaggia's compelling argument.

The court explained that § 718.116(1)(a) provides a remedy for condominium associations faced with owners in default by listing "current owners and prior owners" as a class of persons from whom a condominium association can demand relief for delinquent assessments.³⁸ The court justified this reasoning through a free-market, libertarian analysis. The court explained that nowhere in the condominium statute does it "require[] a condominium association to position itself as the current or prior owner."³⁹ Rather, the predicament that fell upon Spiaggia was a result of "external market forces, namely that condominium associations may find . . . that no one is willing to bid on a foreclosed unit at foreclosure sale."⁴⁰ Regardless of the impracticability, the court goes further in a footnote to explain that nothing in the condominium statute prevents Spiaggia from trying to collect unpaid assessments from the prior owner whom Spiaggia purchased the Unit from.⁴¹ The court does not provide any context as to how realistic this option may be and thus fittingly hid this somewhat obvious but impractical suggestion in a footnote.⁴²

Lastly, the appellate court addressed whether the issue of notice has any effect on Aventura's liability for the unpaid assessments. Spiaggia argued that Aventura was on notice of the amounts owed on the Unit and thus knew the liabilities associated with the Unit it purchased.⁴³ The court struck down this argument by stating that nothing in the record demonstrates that Aventura knew it would be *entirely* responsible for the unpaid assessments as a result of purchasing the property.⁴⁴ The court reasoned that Aventura purchased the Unit understanding there were liabilities attached to it, but because § 718.116(1)(a) allows for "joint and several liability," Aventura should not bear the entire burden of past due assessments.⁴⁵ Thus, after narrowly interpreting § 718.116(1)(a) and disagreeing with the arguments raised by Spiaggia, the appellate court reversed the trial court's decision and held Spiaggia jointly and severally liable for past due assessments up until it

37. *Id.* (emphasis added).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* n.4.

42. *Id.*

43. *Id.* at 639.

44. *Id.* at 640.

45. *Id.*

relinquished its title to Aventura.⁴⁶

2. Dissenting Opinion: Judge Shepherd's Understandable Empathy

Although agreeing with parts of the majority opinion, Judge Frank A. Shepherd was not satisfied with the outcome of the case and used legislative intent and statutory interpretation to reach a different conclusion. The dissent agreed with the majority that Spiaggia's statutory lien, justified by § 718.116(5)(a), survives the foreclosure.⁴⁷ Next, the dissent identified that the majority interpreted "the prior owner" to be Spiaggia, and because the prior owner "is jointly and severally liable with the current owner for all past due assessments up to the time of the transfer of title," Spiaggia is partially responsible for the past due assessments.⁴⁸ The dissent then wondered, "*what happen[ed] to the lien?*"⁴⁹ Judge Shepherd goes on to say that contrary to the majority opinion, there is "a way to give meaning to both the statutory lien in subsection 5(a) and the statutory language of subsection (1)(a)."⁵⁰

Using reliable statutory interpretation principles, the dissent began its analysis by noting that constructing laws to give effect to every clause and part thereof is typically favored.⁵¹ Applying this principle, the dissent found that the legislative purpose of § 718.116 was to "assist condominium associations to be made whole in the collection of past due assessments, while . . . [also] not unduly impairing the value of collateral held by first mortgagees."⁵² This is evidenced by the legislature giving condominium associations statutory liens over units that are under the association's jurisdiction.⁵³ Using these logical deductions, the dissent asserted that third-party purchasers "are subject to old-fashioned caveat emptor principles."⁵⁴ The third-party buyers' "protection lies in satisfying themselves before purchase, whether by contract or judicial sale, of the status of past-due assessments on the unit."⁵⁵

46. *Id.*

47. *Id.* (Shepherd, J., dissenting).

48. *Id.* (quoting *id.* at 639 (majority opinion)) (internal quotation marks omitted).

49. *Id.* at 640 (emphasis added).

50. *Id.*

51. *Id.* "A corollary to this rule, of course, is that a construction that would leave without effect part of the language used should be rejected if possible." *Id.* (citing *State v. M.M.*, 407 So. 2d 987, 990 (Fla. Dist. Ct. App. 1981)).

52. *Id.*

53. *Id.*

54. *Id.* Caveat emptor is the common law "doctrine holding that purchasers buy at their own risk." BLACK'S LAW DICTIONARY (9th ed. 2009).

55. *Spiaggia*, 105 So. 3d at 640 (Shepherd, J., dissenting).

The crux of the dissent's divergence from the majority opinion focused on Judge Shepherd's interpretation of § 718.116(6)(a). Reinforcing the notion that statutory interpretation is a "holistic endeavor," the dissent found that § 718.116(1)(a) and (6)(a) are compatible with one another.⁵⁶ What Judge Shepherd meant by this was that joint and several liability between Aventura and Spiaggia (§ 718.116(1)(a)) and Spiaggia's option to enforce its existing statutory lien right (§ 718.116(6)(a)) are both options that Spiaggia can choose to execute. Section 718.116(6)(a) explicitly states that, "[t]he association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed *and* may also bring an action to recover a money judgment for unpaid assessments without waiving any claim of lien."⁵⁷ Thus, using principles of statutory interpretation, the dissent asserted that § 718.116(6)(a) is evidence that the legislature intended to make condominium associations whole, and Judge Shepherd felt that this evidence held more weight than relying on the ambiguous term "previous owner" that is fundamental to the majority's analysis.⁵⁸ In conclusion, the dissent would affirm the trial court's holding.⁵⁹

II. Immediate Effects from the *Spiaggia* Decision

After the Third District Court of Appeal released the *Spiaggia* opinion, many real estate attorneys were in disbelief.⁶⁰ It was almost as if condominium associations were on their way to not being able to collect past due assessment fees from any future purchaser. Luckily, the court's holding did not reach this far and *Spiaggia* applies only in a specific set of circumstances.⁶¹

Spiaggia applies only if the condominium association foreclosed upon its statutory lien and took title to the property, and the bank that held the first mortgage, "completed its foreclosure action and sold the property at public auction."⁶² Then, at the public auction, a third-party bidder purchased the property from the bank.⁶³ The crux of this fact-

56. *Id.* at 641.

57. FLA. STAT. § 718.116(6)(a) (2009) (emphasis added).

58. *Spiaggia*, 105 So. 3d at 641 & n.6 (Shepherd, J., dissenting) (internal quotation marks omitted).

59. *Id.* at 641.

60. *E.g.*, *PeytonBolin Legal Update—Aventura Management LLC v. Spiaggia Ocean Condominium Association*, PEYTONBOLIN PL, <http://www.peytonbolin.com/2013/01/peytonbolin-legal-update-aventura-management-llc-v-spiaggia-ocean-condominium-association/> (last visited Mar. 2, 2014) [hereinafter *PeytonBolin*].

61. *Id.* (concluding similarly).

62. *Id.*

63. *Id.*

specific scenario is that the condominium association takes title to the property *before* the third party purchases the property at the bank foreclosure sale because, according to *Spiaggia*, this qualifies the association as an intervening owner.⁶⁴ Being the intervening owner between the original defaulting owner and the third-party purchaser means the association is “jointly and severally liable with the [original defaulting] owner for all unpaid assessments.”⁶⁵ Thus, as opposed to holding the party who purchased the first mortgage (from essentially the defaulting owner) liable for past due assessments, the association is held liable for the assessment fees *simply because of the order in which the association temporarily took title*. As will be explained later, this emphasis on the order of who took title seems to stray away from the overall purpose of § 718.116, which is to make the condominium association at least partially whole.

Spiaggia will primarily affect how condominium associations handle defaulting unit owners in the future. Traditionally, associations have “avoided acquiring properties through their own foreclosure actions for the past-due fees, given that lenders typically moved quickly on their foreclosure actions and the associations’ ability to recover delinquent fees is limited under the law.”⁶⁶ However, because of the rise in foreclosures, judicial backlog and “dilatory tactics of homeowners and counsel”⁶⁷ data shows that it takes an *average of 2.5 years* for banks to complete foreclosures in Florida.⁶⁸ What does this mean for defaulting unit owners? Typically, it allows for substantial periods of “free rent” where the association is waiting on the bank to foreclose its lien and the unit owner takes advantage of that wait by not paying any assessment fees to the association.⁶⁹ Furthermore, banks are typically not in a hurry to complete the foreclosure process, obtain title to the unit, and begin paying fees associated with unit ownership.⁷⁰ This is evidenced when banks search for note purchasers and essentially try to short sale their interest in the property in order to “stem their losses.”⁷¹

64. *Spiaggia*, 105 So. 3d at 638.

65. FLA. STAT. § 718.116(1)(a) (2009).

66. Blanch, *supra* note 5.

67. Peter P. Hargitai, *Gotcha! Associations Corner Mortgagees for Past Due Assessments*, PRAC. REAL EST. LAW., Jan. 2013, at 19, 20.

68. Blanch, *supra* note 5; *cf.* Creola Johnson, *Renters Evicted En Masse: Collateral Damage Arising From the Subprime Foreclosure Crisis*, 62 FLA. L. REV. 975, 976 (2010) (discussing how banks are ignoring market conditions if they think opting for foreclosure actions against landlords/renters is their best option).

69. Hargitai, *supra* note 67, at 20 (internal quotation marks omitted).

70. *Id.*

71. *Id.*

In response to these long delays, condominium associations began moving quickly to obtain ownership of the defaulting owners' units before the banks completed the foreclosure process.⁷² Associations did so to mitigate the lost revenue that associations had already suffered. Thus, instead of letting the unit either stay vacant or worse, have the defaulting owner stay there "rent free," associations can acquire title and lease the units to recover assessment fees that would otherwise not be available if the association had sat idle and waited for the bank to complete the timely foreclosure process. This not only benefits the association economically, but it helps "bring back the sense of community that condominium living promotes [and] [n]on-delinquent unit owners generally care for their units."⁷³

Once the bank eventually completes their foreclosure, the association has received assessment fees (income) for sometimes up to three years, and thus is much better off than if they had just waited for the bank to obtain title to the unit.⁷⁴ Additionally, associations were also able to bill the new owner (as a result of the bank's foreclosure) for the past due fees that the defaulting owner owed the association. This process was completed in accordance with the "safe harbor" provision of § 718.116(1)(b)(1). Under the safe harbor provision, the liability of the first mortgagee is limited to the lesser of either the fees that accrued during the twelve months immediately preceding the acquisition of title or one percent of the original mortgage debt.⁷⁵ Thus, by acquiring title, the association could collect both assessment fees from leasing the unit to new owners and could bill the new third-party owners in accordance with the § 718.116 "safe harbor" provision. In short, *the association was able to retain financial stability in the event of defaulting unit owners.*

However, *Spiaggia* drastically changes this process. If the association acquires title to the unit before the bank completes the foreclosure process (thereby becoming an intervening owner), the *Spiaggia* court holds that associations are then responsible for the past due assessments of the defaulting owner.⁷⁶ Thus, condominium associations have to carefully weigh their options. If an association predicts it may take in more money from leasing a unit than it would receive from the bank or a third-party investor under the safe harbor provision, then, and only then, should the association obtain title to the

72. Blanch, *supra* note 5.

73. Hargitai, *supra* note 67, at 22.

74. Blanch, *supra* note 5.

75. FLA. STAT. § 718.116(1)(b)(1) (2009).

76. Aventura Mgmt., LLC v. Spiaggia Ocean Condo. Ass'n, 105 So. 3d 637, 638–39 (Fla. Dist. Ct. App. 2013).

unit.⁷⁷ This prediction can sometimes be difficult to determine, but the *Spiaggia* decision places the onus on the association to make this decision, even if it results in the association recouping much less delinquent fees than anticipated. Is this the purpose of § 718.116? Should the burden be on the association, who is typically the innocent party in a unit foreclosure proceeding? These issues are examined in the following section, which analyzes the latent ambiguities of § 718.116.

III. The Legislative Intent Behind Florida Statute § 718.116

In recent years, Florida Statute § 718.116 has plagued attorneys and courts alike with its provisions that are sometimes difficult to interpret because of their ambiguous meanings. In particular, the question of whom condominium associations can collect delinquent assessments from during the foreclosure process has caused a great deal of confusion. According to the majority opinion in *Spiaggia*, the determination of who is responsible for unpaid assessments is exclusively answered in subsection (1)(a) of § 718.116.⁷⁸ This is a result of the majority's strict interpretation of § 718.116(1)(a), but as the *Spiaggia* dissent points out, statutory interpretation is a "holistic endeavor."⁷⁹ Furthermore, § 718.116(1)(a) does not explain if "unit owner" or "previous owner" can be the actual condominium association itself and whether § 718.116(6)(a) has any effect on subsection (1)(a).⁸⁰ These latent ambiguities can be resolved using principles of statutory interpretation, which dictate that "[t]he primary guide to statutory interpretation is to determine the purpose of the legislature."⁸¹

A. *Conflicting Viewpoints?*

"When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction"⁸² This, put simply, is not applicable to § 718.116. If it were, the groundbreaking *Spiaggia* decision would not have made headlines across South Florida because the legal community would have expected the appellate court to rule in accordance with the typical interpretation of § 718.116.⁸³ The confusion surrounding § 718.116 focuses on whether the Florida legislature "intended to make a purchaser who acquired the property via

77. *PeytonBolin*, *supra* note 60.

78. *Spiaggia*, 105 So. 3d at 638.

79. *Id.* at 641 (Shepherd, J., dissenting).

80. FLA. STAT. § 718.116(1)(a), (6)(a).

81. *Tyson v. Lanier*, 156 So. 2d 833, 836 (Fla. 1963).

82. *A.R. Douglass, Inc. v. McRaney*, 137 So. 157, 159 (Fla. 1931).

83. *See, e.g., Blanch*, *supra* note 5; *PeytonBoylan*, *supra* note 60.

foreclosure . . . jointly and severally liable with the previous owner for all unpaid assessments” if that purchaser was the condominium association itself.⁸⁴ Because the answer to this is unclear, the first step in interpreting § 718.116 is to examine the legislative history of the statute.

Unfortunately, the legislative history seems to suggest mixed purposes behind the creation and amendments to § 718.116. To begin, the legislative intent behind § 718.116(1)(a) does not appear to weigh in favor of the condominium association. Since the statute’s creation, the language “regardless of how his or her title has been acquired” has not been materially amended and implies that subsection (1)(a) is an all-inclusive provision, no matter what the status of the “unit owner” actually is.⁸⁵ This assumption is bolstered when looking at the 1991 amendment that added “a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title.”⁸⁶ The legislative history suggests that the lawmakers were not concerned with who the unit owner actually was, but were more interested in categorizing what the unit owner was responsible for upon becoming a bona fide “unit owner.”

However, the legislative history presents a different view when examining the July 1, 2010 amendments made to § 718.116.⁸⁷ In particular, the amendment to § 718.116(1)(b)(1) illustrates the legislature’s desire to provide a mechanism allowing community associations to collect past due assessments.⁸⁸ The 2010 amendment extends the period of time an association can collect assessments from a first mortgagee, its successor, or an assignee from six months to twelve months immediately preceding that person’s acquisition of title.⁸⁹ This statutory change demonstrates the legislature’s intent to increase the scope of the association’s recovery for delinquent assessments in addition to increasing the liability of purchasers. This falls in line with the legislative purpose Judge Shepherd discussed in his *Spiaggia*

84. *Ambiguity of Florida Statute § 718.116 and Its Impact on Community Associations’ Ability To Collect Unpaid Assessments (Spring 2011 Litigation Quarterly)*, COLE, SCOTT & KISSANE, P.A. (May 18, 2011), <http://www.csklegal.com/quarterly/publications/ambiguity-of-florida-statute-%C2%A7-718-116-and-its-impact-on-community-associations%E2%80%99-ability-to-collect-unpaid-assessments/>.

85. FLA. STAT. § 718.116(1)(a); see Act of June 22, 1976, ch. 76-222, sec. 1, § 718.116, 1976 Fla. Laws 414, 426 (“A unit owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the unit owner.”).

86. *PeytonBolin*, *supra* note 60 (internal quotation marks omitted).

87. *Id.*

88. *Id.*

89. *Id.*

dissent. Judge Shepherd noted that “the fundamental purpose of the Legislature in promulgating section 718.116 was to assist condominium associations to be made whole in the collection of past due assessments, while at the same time not unduly impairing the value of collateral held by first mortgagees.”⁹⁰ This interpretation, however, seems to conflict with the legislative intent behind § 718.116(1)(a) discussed above. Therefore, the question becomes, how do we reconcile these two conflicting views when looking at the legislative purpose behind § 718.116 as a whole?

B. *Resolving the Conflicting Purposes*

The answer is simple and makes sense when viewed in the context of history: the Florida Legislature clearly did not envision associations as actual owners of these types of properties. Yes, condominium associations have statutory liens over every unit, which some may argue qualifies them as “quasi-owners;” but the only reason they have these statutory liens over the units is to have a reliable method of enforcing unit owners to pay their assessment fees. As Attorney Peter Hargitai put it, “the drafters did not envision a condominium market saturated with 100 percent financing, negative equity, and underfunded associations.”⁹¹

Thus, when looking at § 718.116(1)(a)—although the legislative history suggests that its purpose is all inclusive (i.e., “all unit owners” without exception)—the legislature meant this provision to apply to unit owners under the notion that condominium associations would never be considered “unit owners.” This is because, up until 2008, condominium associations were practically never “unit owners” as used in § 718.116(1)(a). It was almost never worthwhile to acquire title as a condominium association because banks typically moved quickly through foreclosure and safe harbor provisions limited associations’ ability to recover past due fees.⁹² Thus, if condominium associations were never “unit owners,” then drafting a provision that would have no real world application would be pointless for the Florida Legislature. Unfortunately, the conditions of the Florida condominium market have drastically changed and thus the legislature must act accordingly to clarify exactly how condominium associations fit within the purview of § 718.116.

90. *Aventura Mgmt., LLC v. Spiaggia Ocean Condo. Ass’n*, 105 So. 3d 637, 640 (Fla. Dist. Ct. App. 2013) (Shepherd, J., dissenting).

91. Hargitai, *supra* note 67, at 20.

92. Blanch, *supra* note 5.

CONCLUSION

Taking into consideration all of the arguments raised by both parties at the trial and appellate court level, the end result seems to have been the strictly correct one. Using a literal interpretation of § 718.116, the court correctly applied subsection (1)(a) to the facts of the case. Although provisions of § 718.116 were sometimes ambiguous as applied to the facts of *Spiaggia*, the legislative intent was too opaque to allow the court to deviate from the grounded statutory language. Scholarly analysis and legislative history do partially weigh in favor of giving broader powers to associations for recovering past due assessments, but a court interpreting § 718.116 literally does not allow for much speculation as to how the legislature intended § 718.116 to apply to unit owners who were also condominium associations. *Spiaggia*'s best argument was that its statutory lien merged with the certificate of title, but unfortunately, the remedy presented to the court that could potentially facilitate the compatibility between § 718.116(1)(a) and § 718.116(6)(a) was unpersuasive.

Although the logically correct analysis decided the holding of the appellate court, the outcome was not consistent with the legislative purpose of § 718.116. The legislative history does not indicate a strong preference towards associations' rights as unit owners because the drafters never envisioned a situation where associations obtaining title themselves would be more beneficial than waiting for the banks to foreclose on the defaulting owners. It is imperative that the Florida Legislature amends § 718.116 to account for this type of situation presented in *Spiaggia* because without clarification, condominium associations will be at the mercy of the courts whose only guidance is an outdated statute.