


ORDERED.

Dated: March 28, 2019

  
Cynthia C. Jackson  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re:

Adriana Montoya,

Debtor.

Case No.: 6:16-bk-08164-CCJ  
Chapter 7

Adriana M Montoya,

Plaintiff,

Adv. No.: 6:17-ap-00115-CCJ

v.

Alliance Cas, LLC, a Florida Corporation,  
and Citrus Oaks Homeowners Association,  
Inc., a Florida Corporation,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This adversary proceeding came before the Court to consider the Motion by Defendants Alliance Cas, LLC and Citrus Oaks Homeowner's Association, Inc. (collectively the "Defendants") for Summary Judgement (Doc. No. 17; the "Motion for Summary Judgment") and

the Response by Plaintiff, Adriana M Montoya (the “Debtor”) (Doc. No. 18). Having considered the pleadings, the argument of counsel, and the record in this case, the Court grants the Motion for Summary Judgment for the reasons set forth below.

### Facts

The Debtor filed for relief under Chapter 7 of the Bankruptcy Code on December 16, 2016 (the “Petition Date”). As of the Petition Date, the Debtor owned a home in Gotha, Florida (the “House”). The House is subject to a Declaration of Covenants and Restrictions which was recorded by the homeowner’s association (the “HOA”) over thirty years ago in the public records of Orange County, Florida (the “DCR”). The DCR provides that the owner of the House agrees to pay the HOA assessments and that “[t]he annual and special assessments together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made.” The Debtor lists the HOA in her schedules as a creditor holding an unsecured claim for homeowner association assessments, fees, and costs (collectively the “Pre-Petition Debt”).<sup>1</sup> On March 21, 2017, the Court entered an order granting the Debtor a discharge.

After entry of the discharge, the HOA recorded in the public records of Orange County, Florida, a claim of lien against the House for all assessments owed to the HOA, including the Pre-Petition Debt. After discharge the HOA also provided the Debtor with account statements listing all amounts owed to the HOA, including the Pre-Petition Debt.

In response to the action of the HOA, the Debtor initiated this adversary proceeding alleging that (i) because the HOA did not record a claim of lien against the House before the Petition Date, the Pre-Petition Debt is unsecured and has been discharged, and (ii) by recording the claim of lien and providing the Debtor with account statements which include the Pre-Petition

Debt, the HOA has violated the discharge injunction imposed by Section 524 of the Bankruptcy Code.

By the Motion for Summary Judgment, the Defendants argue that the DCR is a covenant that runs with the land and creates a lien on the House for all assessments, fees and costs including the Pre-Petition Debt as of the time it was incurred. As a result, the Defendants argue, the HOA had a lien on the House for the Pre-Petition Debt as of the Petition Date and the bankruptcy discharge does not prevent the HOA from recording a claim of lien in the public records and proceeding *in rem* as to the House. Because the HOA holds a lien on the House for the Pre-Petition Debt and the Debtor's claims require the Pre-Petition Debt to have been unsecured and discharged in order to prevail in this adversary proceeding, the Defendants argue that they are entitled to summary judgment on all counts. At oral argument on the Motion, the Debtor conceded that the HOA's actions to collect the Pre-Petition Debt were *in rem* as to the House.

#### Discussion

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law".<sup>2</sup> The parties do not dispute the material facts. The Debtor owns the House that is subject to the DCR. The HOA recorded the DCR in the public records prior to the Petition Date. The DCR provides for the imposition of a lien on the House for unpaid assessments, attorney's fees and costs. The Debtor owes the Pre-Petition Debt to the HOA consisting of assessments, attorney's fees and costs. And prior to the Petition Date, the HOA did not record a claim of lien in the public records for the Pre-Petition Debt.

To resolve the dispute, the Court must examine whether the HOA's failure to record a claim of lien prior to the Petition Date renders the Pre-Petition Debt unsecured and discharged.

A bankruptcy discharge extinguishes only the debtor's personal liability for a debt.<sup>3</sup> The discharge, by itself, does not modify property rights or eliminate liens securing the debt.<sup>4</sup> Because "property interests are created and defined by state law," the Court reviews Florida law to determine the legal effect of the DCR.<sup>5</sup> And after reviewing Florida law, courts in this Division agree that "[t]he obligation to pay homeowners' association assessments is based on a covenant running with the land, a property right" that a bankruptcy discharge alone cannot modify.<sup>6</sup>

Here, the Debtor does not dispute that the DCR is a covenant that runs with the land, or that the DCR allows the HOA to impose a lien on the House for unpaid assessments. The Debtor instead argues that the statute governing homeowner associations liens -- Chapter 720.3085 of the Florida Statutes -- requires the HOA to record a claim of lien in the public records to properly secure the unpaid assessments.

In support, the Debtor relies on subsection (a) of paragraph (1) of the statute which states "[t]o be valid, a claim of lien must" contain certain information and that "[t]he claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process." Because the HOA did not record a claim of lien in the public records prior to the Petition Date, the Debtor argues that the HOA did not have a valid lien under Chapter 720.3085 of the Florida Statutes. As a result, the Debtor argues that the Pre-Petition Debt has been discharged and that the bankruptcy discharge enjoins the HOA from perfecting the lien as to the unsecured Pre-Petition Debt.

The Debtor's argument overlooks paragraph (1) of the statute. That paragraph provides "[w]hen authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section," and (except for first

mortgagees) “the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded.” It further provides that *as to first mortgagees*, “the lien is effective from and after recording of a *claim of lien* in the public records of the county in which the parcel is located.”

Paragraph (1) clearly states that except for first mortgagees, the HOA has a statutory lien to secure the payment of assessments which relates back to the association’s recorded declaration. Except for first mortgagees, paragraph (1) does not require the HOA to file a claim of lien in the public records to perfect or validate its lien rights. And courts interpreting similar provisions in the statute governing condominium associations have reached this same conclusion<sup>7</sup>. Those courts have held that except for first mortgagees, an association does not have to file a claim of lien to validate or perfect its lien for assessments.<sup>8</sup>

Here, the DCR provides that the HOA has a continuing lien on the House for annual and special assessments together with interest, costs and reasonable attorney fees. As a result, under Chapter 720.3085, the HOA holds a statutory lien on the House that relates back to the association’s recorded declaration recorded 30 years ago to secure the payment of assessments. Accordingly, the Court finds that as of the Petition Date, the HOA held a valid, perfected lien on the House for the Pre-Petition Debt which was not dischargeable and is fully enforceable.

The Debtor further argues that to the extent that the HOA does holds a lien, Chapter 720.3085 does not allow a lien to secure the HOA’s attorney fees. Again, paragraph (1) provides that the association has a lien on each parcel to secure the payment of assessments *and other amounts provided for by this section*. Subsection (c) of paragraph (1) provides that “[t]he association is entitled to recover its reasonable attorney’s fees incurred in an action to foreclose a lien...” The Debtor did not dispute that the HOA’s attorney’s fees relate to anything other than

the *in rem* foreclosure of the House for unpaid assessments. Accordingly, the Court finds that the HOA held a valid, perfected lien on the House for the Pre-Petition Debt, including any attorney fees.

### Conclusion

The DCR is a covenant that runs with the land and creates a lien on the House for all assessments, attorney's fees and costs owed to the HOA, including the Pre-Petition Debt. Except for first mortgagees, Chapter 720.3085 of the Florida Statutes provides that such lien relates back to the initial recording of the DCR and does not require the HOA to record a "claim of lien" to validate or perfect the lien on the House. Because the HOA held a lien on the House for the Pre-Petition Debt on the Petition Date and the Debtor's claims require the Pre-Petition Debt to have been unsecured and discharged to prevail, the Court concludes that the Defendants are entitled to summary judgment on all counts. Accordingly, it is:

#### ORDERED:

1. The Motion for Summary Judgment (Doc. No. 17) is granted.
2. Judgment is entered in favor of Defendants Alliance Cas, LLC and Citrus Oaks Homeowner's Association, Inc. and against the Plaintiff, Adriana M Montoya as to all counts of the complaint.

Attorney David E. Hicks is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

<sup>1</sup> On the amended bankruptcy schedules, the Debtor represents that Alliance CAS is owed \$2,273.41 for “Homeowner Association fees dues (Citrus Oaks Homeowners Association)” and that Citrus Oaks HOA is owed \$775.00 for “Homeowner association fees” (Doc. No. 19). At oral argument, the Defendants stated that approximately \$1,100 is owed. Because the amount owed to the HOA is not relevant to this ruling, the Court declines to determine the amount owed.

<sup>2</sup> Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056.

<sup>3</sup> See 11 U.S.C. § 524(a)(1); *See also Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991).

<sup>4</sup> *See In re Montalvo*, 546 B.R. 880, 886 (Bankr. M.D. Fla. 2016)(Jennemann, J.); *In re Scantling*, 465 B.R. 671, 679-80 (Bankr. M.D. Fla. 2012)(Williamson, J.) *In re Rivera*, 256 B.R. 828, 832 (Bankr. M.D. Fla. 2000)(Briskman, J.).

<sup>5</sup> *Montalvo*, 546 B.R. at 884 quoting *In re Witko*, 374 F.3d 1040, 1043 (11<sup>th</sup> Cir. 2004).

<sup>6</sup> *Montalvo*, 546 B.R. at 886; *Rivera*, 256 B.R. at 832.

<sup>7</sup> Chapter 718.116 of the Florida Statutes governs condominium association liens, and states in part:

(5)(a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located...

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates...The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, administrative late fees, and all reasonable costs and attorney fees incurred by the association incident to the collection process...

<sup>8</sup> *Calendar v. Stone Gardens Section III Condo. Ass’n, Inc.*, 234 So. 3d 18, 19-20 (Fla. 4th DCA 2017); *See also In re Valcarcel*, 2013 WL 4097193, \*2 (Bankr. S.D. Fla. 2013)(Cristol, J)(Florida’s legislature gave condominium associations a statutory lien for assessments, which secures payments without the necessity of filing a claim of lien); *Aventura Mgmt., LLC v. Spiaggia Ocean Condo. Ass’n, Inc.*, 105 So. 3d 637, 640 (Fla. 3rd DCA 2013)(Shepherd, J., dissenting)(“[T]he Legislature has given condominium associations a statutory lien on each condominium unit over which it has jurisdiction, to secure payment of assessments without the necessity of filing a claim of lien in the public records, with the single exception of first mortgagees, where record notice is required.”)