IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-319

No. COA21-352

Filed 3 May 2022

Mecklenburg County, No. 19-SP-3244

IN THE MATTER OF THE PROPOSED FORECLOSURE of a Claim of Lien filed against SLOK, LLC to secure sums due to Courtside Condominium Owners Association, Inc. on August 2, 2018 and recorded in Case Number 18-M-5067 in the Office of the Clerk of Superoir Court for Mecklenburg County by Sellers, Ayers, Dortch & Lyons, P.A., Trustee.

Appeal by Defendant from order for foreclosure entered 18 December 2019 by the Clerk of Superior Court in Mecklenburg County Court. Heard in the Court of Appeals 9 February 2022.

James, McElroy & Diehl, P.A., by Preston O. Odom, III, for Defendant-Appellant.

Sellers, Ayers, Dortch & Lyons, by Michelle Massingale Dressler, for Plaintiff-Appellee.

CARPENTER, Judge.

¶ 1 Plaintiff Courtside Condominium Owners Association (the "Association") filed a claim of lien (the "2018 Claim") against Defendant SLOK, LLC ("Slok") on 2 August 2018, and the Clerk of Superior Court for Mecklenburg County entered an order for foreclosure on 18 December 2019. The trial court affirmed the Clerk's order, and

Slok filed this appeal on 18 November 2020. After careful review, we affirm the Clerk of Superior Court's order for foreclosure.

I. Factual & Procedural Background

¶ 2 The present case represents the third appeal to this Court by Slok concerning claims of liens filed by the Association. The result of the current appeal hinges, in part, on this Court's dispositions in the previous two appeals. *See Slok, LLC v. Courtside Condo. Owners Ass'n*, No. COA18-736, 265 N.C. App. 111, 826 S.E.2d 580, 2019 WL 1749031 (unpublished) ("Slok I"), *disc. rev. denied*, 372 N.C. 706, 830 S.E.2d 834 (2019); *Slok, LLC v. Courtside Condo. Owners Ass'n*, No. COA20-606, 2021-NCCOA-509, 862 S.E.2d 438, 2021 WL 42728762021 (unpublished) ("*Slok II*"). The Association filed three claims of lien against Slok: the first was filed on 16 March 2016 (the "2016 Claim"); the second was filed on 1 September 2017 (the "2017 Claim"); and the most recent 2018 Claim was filed on 2 August 2018.

¶ 3 The Association was created by a Declaration of Condominium (the "Declaration") and includes 106 residential units and one commercial unit. *Slok I*, 2019 WL 1749031 at *1. Slok is the owner of the commercial unit, which it purchased from Transocean Investments, Inc. ("Transocean") in July 2014. *Id.* at *1. The Declaration originally designated the "common trash area" as a common element for all units, but in 2009, Transocean asked to upfit the commercial unit to include a new commercial trash room. *Id.* at *1. The Association agreed, and the parties executed

a trash room amendment to the Declaration (the "Amendment"). *Id.* at *2. The Amendment established the new commercial trash room as a limited common element for the exclusive use of the commercial unit. *Id.* at *2. The Amendment designated the Association responsible for the maintenance, repair, and operation of the commercial trash room, and the Amendment designated the cost of the maintenance, repair, and operation to the owner of the commercial unit. *Id.* at *2. The Association hired a private trash service for collection services and assessed the commercial unit accordingly. *Id.* at *2. Upon purchasing the commercial unit, Slok failed to pay assessments, and the Association filed the 2016 Claim to secure the assessments. *Id.* at *2. Slok also "failed to remove the personal items from the Commercial Trash Room, resulting in fines which were secured by the filing of [the 2017 Claim]." *Id.* at *2.

¶ 4 In *Slok I*, the Association sought to validate the Amendment and the assessments and fines charged to Slok. *See id.* at *4-5. This Court found assessments totaled $66,833.03 as of June 2017, and fines totaled $42,500.00 as of January 2018. *Id.* at *2. We held Slok was estopped from challenging the validity of the Amendment and held the assessments and fines were "valid and enforceable." *Id.* at *5, 8. The trial court order in *Slok I* allowed for a reduction of fines, however, and authorized judicial foreclosure upon Slok meeting certain conditions. *Id.* at *9. This Court found this portion of the order was an impermissible conditional order and remanded the

case to the trial court. *Id.* at *9. On remand, the trial court affirmed the prior judicial foreclosure, and Slok appealed. *See Slok II*, 862 S.E.2d 438, 2021 WL 42728762021 at *1. This Court again held the reduction of fines was an impermissible conditional order and therefore "void." *Id.* at *7. This Court's holding in *Slok II* did not, however, affect the validity of the Amendment or the amount of assessments or fines calculated in *Slok I*; the *Slok II* holding reiterated the conditional order was impermissible. *See id.* at *7-8.

¶ 5 Slok's last fine payment was $51,800.00 and made on 13 April 2018, which brought Slok's fine balance to $0.00. Slok's last assessment payment was $66,833.02 and made on 30 June 2017. At trial, Slok contended this payment should have brought its current assessment balance to $0.00. Assessment charges continued to accrue after this payment and Slok's total assessment balance was $87,481.17 as of 3 March 2020. The 2018 Claim was the Association's attempt to collect Slok's remaining assessment balance.

II. Jurisdiction

¶ 6 This Court has jurisdiction to address Defendant's appeal from a final judgment pursuant to N.C. Gen. Stat. § 7A-27(b) (2021).

III. Issues

¶ 7 The issues on appeal are: whether the trial court (1) lacked subject matter jurisdiction because the Amendment to the Declaration was ineffective; or (2)

erroneously allowed the nonjudicial foreclosure sale to proceed because a valid debt was not established.

IV. Standard of Review

¶ 8 "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010). For a party to hold a valid debt, "two questions must be answered in the affirmative: (1) 'is there sufficient competent evidence of a valid debt?'; and (2) 'is there sufficient competent evidence that [the party seeking to foreclose is] the holder [ ] of the notes [that evidence that debt]?'" *In re Adams*, 204 N.C. App. 318, 321-22, 693 S.E.2d 705, 709 (2010). "Competent evidence is evidence 'that a reasonable mind might accept as adequate to support the finding.'" *Eley v. Mid/East Acceptance Corp. of N.C.,* 171 N.C. App. 368, 369, 614 S.E.2d 555, 558 (2005) (quoting *Andrews v. Fulcher Tire Sales & Serv.,* 120 N.C. App. 602, 605, 463 S.E.2d 425, 427 (1995)).

V. Analysis

A. Effectiveness of Declaration Amendment

¶ 9 Defendant first contends the Amendment to the Declaration is ineffective and void because it was not properly recorded, and therefore, the trial court did not have subject matter jurisdiction over the 2018 Claim for lack of standing to foreclose.

¶ 10 "[R]es judicata precludes a second suit involving the same claim between the same parties or those in privity with them when there has been a final judgment on the merits in a prior action in a court of competent jurisdiction." *Nw. Fin. Grp. v. Cnty. of Gaston,* 110 N.C. App. 531, 536, 430 S.E.2d 689, 692–93 (1993). A final judgment "operates as an estoppel not only as to all matters actually determined or litigated in the prior proceeding, but also as to all relevant and material matters within the scope of the proceeding which the parties, in the exercise of reasonable diligence, could and should have brought forward for determination." *Rodgers Builders, Inc. v. McQueen,* 76 N.C. App. 16, 22, 331 S.E.2d 726, 730 (1985).

¶ 11 Slok contends the trial court did not have subject matter jurisdiction because the Amendment to the Declaration was void, and the Amendment was void because it was not properly recorded. Slok made a similar argument in *Slok I,* where it asserted the Declaration was void for lack of proper approval. *Slok I*, 2019 WL 1749031 at *4. In *Slok I*, this Court "affirm[ed] the trial court's order granting summary judgment in favor of the Association as to Plaintiff's challenges pertaining to the validity of the Trash Room Amendment." *See id.* at *5. Slok contends it should not be precluded from disputing the recording of the Amendment, as the recording was not addressed in *Slok I.* If the recording of the Amendment is an issue, however, it "could and should have brought forward for determination" in *Slok I. See Rodgers Builders, Inc.,* 76 N.C. App. at 22, 331 S.E.2d at 730. Therefore, *res judicata* precludes

Slok from litigating the validity of the Amendment, as the validity of the Amendment was established in a final judgment from *Slok I*. *See Slok I*, 2019 WL 1749031 at *4; *Nw. Fin. Grp.*, 110 N.C. App. at 536, 430 S.E.2d at 692–93; *Rodgers Builders, Inc*, 76 N.C. App. at 22, 331 S.E.2d at 730.

¶ 12 Accordingly, the Amendment is deemed effective and therefore permits the Association to establish subject matter jurisdiction over the 2018 Claim. *See Nw. Fin. Grp.*, 110 N.C. App. at 536, 430 S.E.2d at 692–93; *Rodgers Builders, Inc*, 76 N.C. App. at 22, 331 S.E.2d at 730.

B. Validity of Debt

¶ 13 The second issue on appeal is whether the Association established Slok owed it a valid debt. Slok contends the Association did not establish Slok owed a valid debt, as its previous payments satisfied its outstanding assessment and fine balances. Slok further contends "the Association engaged in secretive accounting practices."

¶ 14 Again, "res judicata precludes a second suit involving the same claim between the same parties or those in privity with them when there has been a final judgment on the merits in a prior action in a court of competent jurisdiction." *Nw. Fin. Grp.*, 110 N.C. App. at 536, 430 S.E.2d at 692–93. A final judgment "operates as an estoppel not only as to all matters actually determined or litigated in the prior proceeding, but also as to all relevant and material matters within the scope of the proceeding which the parties, in the exercise of reasonable diligence, could and should have brought

forward for determination." *Rodgers Builders, Inc.,* 76 N.C. App. at 22, 331 S.E.2d at 730.

¶ 15 In *Slok I*, based on the Association's accounting, this Court held Slok owed $66,833.03 in assessments and $42,500.00 in fines to the Association. *See Slok I,* 2019 WL 1749031 at *2. If the Association's accounting was secretive, it "could and should have [been] brought forward for determination" in *Slok I*. *See Rodgers Builders, Inc.,* 76 N.C. App. at 22, 331 S.E.2d at 730. Therefore, *res judicata* precludes Slok from asserting the Association engaged in secretive accounting, as the validity of the Association's accounting was established in *Slok I*. *See Slok I*, 2019 WL 1749031 at *2; *Nw. Fin. Grp.*, 110 N.C. App. at 536, 430 S.E.2d at 692–93; *Rodgers Builders, Inc*, 76 N.C. App. at 22, 331 S.E.2d at 730.

¶ 16 The Association's current accounting shows Slok owed $87,481.17 in assessments and $0.00 in fines as of 3 March 2020. Since purchasing the commercial unit, Slok made payments of $66,833.02 and $51,800.00 towards its assessment and fine accounts, respectively. These payments ($118,633.02) are $11,348.15 less than the combination of the 3 March 2020 assessment balance ($87,481.17) and the fine balance established in *Slok I* ($42,500.00). Accounting for the inclusion of Slok's one assessment payment in the 3 March 2020 assessment balance, the Association's charges are actually $78,181.17 greater than Slok's payments. Competent evidence shows Slok owed the Association a valid debt. A reasonable mind could view Slok's

payments as less than the Association's charges—by $78,181.17—as basic arithmetic illustrates. *See In re Adams,* 204 N.C. App. at 321-22, 693 S.E.2d at 709; *Eley,* 171 N.C. App. at 369, 614 S.E.2d at 558.

¶ 17 Accordingly, the trial court did not err by allowing the foreclosure sale to proceed. The evidence shows Slok owed the Association a valid debt, and the entry of an order of foreclosure was proper in light that fact. *See In re Adams*, 204 N.C. App. at 321-22, 693 S.E.2d at 709; *Eley*, 171 N.C. App. at 369, 614 S.E.2d at 558.

VI. Conclusion

¶ 18 The Clerk of Superior Court did not err in entering an order for foreclosure. *Res judicata* operates to preclude Slok from disputing the validity of the Amendment or the Association's accounting methods, as the validity of both were established in *Slok I*. *See Slok I*, 2019 WL 1749031 at *2, 4; *Nw. Fin. Grp.*, 110 N.C. App. at 536, 430 S.E.2d at 692–93; *Rodgers Builders, Inc*, 76 N.C. App. at 22, 331 S.E.2d at 730. Further, competent evidence shows Slok owed the Association a valid debt, and the entry of an order of foreclosure was proper in light of that fact. *See In re Adams*, 204 N.C. App. at 321-22, 693 S.E.2d at 709; *Eley*, 171 N.C. App. at 369, 614 S.E.2d at 558. Accordingly, we affirm the actions of the trial court.

AFFIRMED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).