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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-579

Filed 7 May 2025

Durham County, No. 18 SP 1035

IN THE MATTER OF THE FORECLOSURE OF A LIEN BY Executive Office Park
of Durham Association, Inc., Petitioner-Appellee,

v.

MARTIN E. ROCK a/k/a MARTIN A. ROCK, Respondent-Appellant.

LIEN DATED: October 23, 2018

LIEN RECORDED: 18 M 1195

DURHAM COUNTY

Appeal by respondent from order entered 22 March 2024 by Judge John M.
Dunlow in Durham County Superior Court. Heard in the Court of Appeals 28
January 2025.

*Jordan Price Wall Gray Jones & Carlton, PLLC, by J. Matthew Waters and
Lori P. Jones, for petitioner-appellee.*

Mark Hayes for respondent-appellant.

TYSON, Judge.

Martin Rock (“Respondent”) appeals from an order authorizing a sale of three
office condominium units. We vacate and remand.

I. Background

Executive Office Park of Durham Association, Inc. (“Petitioner”) asserts Martin Rock (“Respondent”) is in default and seeks foreclosure. The facts underlying this case are set forth in detail in this Court’s prior opinion, *Foreclosure of Lien by Exec. Off. Park of Durham Ass’n v. Rock*, 277 N.C. App. 444, 445-46, 861 S.E.2d 353, 354 (2021). The pertinent facts are:

Executive Park Developers, LLC developed Executive Office Park. Executive Park Developers, LLC filed a “Declaration of Unit Ownership” creating a governing entity for the development, [Petitioner] on or about 9 November 1982, pursuant to N.C. Gen. Stat. § 47A (2019). Petitioner “consist[s] of all the unit owners [in the development] acting as a group in accordance with the Bylaws and this Declaration.”

The terms of the Declaration provided Petitioner would be governed by “the provisions of the North Carolina Unit Ownership Act.” See N.C. Gen. Stat. § 47A. Petitioner’s board of directors was granted “all of the powers and duties set forth in the [North Carolina] Unit Ownership Act, except as limited by this declaration (sic) and the Bylaws.” The Declaration required unit owners be subject to assessments ordered by the Board of Directors.

If the assessment was not paid after “more than thirty (30) days,” “[a]ny sum assessed remaining unpaid . . . shall constitute a lien upon the delinquent unit or units when filed of record with in (sic) the Office of the Clerk of Superior Court of Durham County in the manner provided for by Article 8 of Chapter 44 of the General Statutes of North Carolina as amended.”

The Declaration provided “the Bylaws” “shall be in the form attached here to as Exhibit ‘E.’” Attached to the Declaration labeled “Exhibit E” were model bylaws which

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could be adopted by the Petitioner. No document titled as “Exhibit E” was executed.

Respondent owns three units within Executive Office Park. Petitioner alleged Respondent was in default under the Declaration because of non-payment of assessments. Respondent countered the amounts Petitioner asserted were inflated by unreasonable fines, interest, and fees.

Respondent also sought to offset amounts allegedly owed against costs he incurred for Petitioner’s alleged failure to repair flood damage to his units. This flood damage caused a mold problem in the units rendering them unusable.

Petitioner alleged Respondent was in arrears for fees and assessments since September 2013 totaling a balance due of \$69,751.89 as of 14 December 2017. Respondent made a redemption payment of \$80,950.00, which Petitioner received and accepted two weeks later on 28 December 2017. On 19 January 2018, Petitioner assessed Respondent \$35,890.00 in legal fees. Petitioner’s ledger shows \$24,706.89 in write-off credits and Respondent owes a balance of \$780.00.

On 22 October 2018, Petitioner filed a claim of lien, alleging Respondent owed \$8,475.00 plus attorney’s fees and costs of \$590.50. Petitioner sought a non-judicial foreclosure sale of Respondent’s three units. After a hearing, an order was filed by the clerk of court authorizing sale of the three properties on 13 December 2018. An “Order Affirming Order Authorizing Sale” was filed in Superior Court on 4 March 2019.

Id.

The Supreme Court of North Carolina reviewed and disagreed with this Court’s holding Petitioner did not possess the right to the power of sale foreclosure. *See In re Foreclosure of a Lien by Exec. Office Park of Durham Ass’n v. Rock*, 382 N.C.

360, 365, 879 S.E.2d 169, 173 (2022). Upon remand, this Court vacated the order authorizing a sale and “remanded for an adjudication of Respondent’s liabilities, if any, without the prior asserted charges included in the dismissed 2015 action.” *Foreclosure of a Lien by Exec. Off. Park of Durham Ass’n v. Rock*, 287 N.C. App. 694, 883 S.E.2d 227, 2023 WL 2126141, at *2 (2023) (unpublished).

Upon remand, the superior court entered an order on 5 December 2023 authorizing a foreclosure sale. The superior court entered amended orders on 6 February 2024 and 22 March 2024. Respondent appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Issues

Respondent argues the superior court erred because no valid debt existed and he was not in default.

IV. Standard of Review

This Court reviews the trial court’s order authorizing an association’s non-judicial power of sale foreclosure *de novo*. *In re Foreclosure of Clayton*, 254 N.C. App. 661, 667, 802 S.E.2d 920, 925 (2017) (citation omitted).

V. No Valid Debt Existed

Respondent argues the trial court erred by including a prior 2015 foreclosure and finding him in default because it is excluded by this Court’s remand and by reliance upon *In re Foreclosure of Lucks*, 369 N.C. 222, 229, 794 S.E.2d 501, 507

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(2016). A prior panel of this Court vacated the order authorizing a sale and “remanded for an adjudication of Respondent’s liabilities, if any, without the prior asserted charges included in the dismissed 2015 action.” *Foreclosure of a Lien by Exec. Off. Park of Durham Ass’n*, 287 N.C. App. 694, 883 S.E.2d 227, 2023 WL 2126141, at *2.

This Court remanded for an adjudication of Respondent’s liabilities, if any, independent of those asserted in the dismissed 2015 action. The ledger begins on 1 August 2017, when the balance showed \$65,476.89 as due. The ledger from the 2018 action contains a balance beginning as \$65,476.89. The ledger shows a balance of \$65,476.89, yet the trial court’s findings do not incorporate how this figure was calculated based upon Respondent’s redemption payment of \$80,950.00, which Petitioner received and accepted on 28 December 2017.

The trial court was instructed to find the 2015 charges, identify any restated, re-used or duplicated 2015 charges, total them up, and deduct them from the charges Petitioner alleged in the instant action. The order does not show this mandate was completed.

The order of the trial court authorizing the sale of Respondent’s three office condominium units is vacated. This cause is again remanded for an adjudication of Respondent’s liabilities, if any, without any prior asserted charges that were included in the dismissed 2015 action, after crediting Respondent’s redemption payment of \$80,950.00, which Petitioner received and accepted on 28 December 2017. *In re*

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Foreclosure of Lucks, 369 N.C. at 229, 794 S.E.2d at 507. If no liabilities are shown to exist, the trial court is instructed to dismiss Petitioner's claim of lien and upon motion to consider sanctions and the imposition of attorney's fees against Petitioner. *Id.*

VI. Conclusion

Petitioner asserted charges in their 2018 non-judicial foreclosure action without a basis in their ledger to resolve or credit their prior 2015 dismissed action. The "Second Amended Order Adjudicating Respondent's Liability and Authorizing Sale" is vacated and remanded for proper adjudication of Respondent's liabilities, if any. *It is so ordered.*

VACATED AND REMANDED.

Judges CARPENTER and FREEMAN concur.

Report per Rule 30(e).