# COMMUNITY COUNSEL

May, 2008 | A Publication of Wean & Malchow, P.A. | Volume 12, Issue 5

## THE SIGNIFICANCE OF THE ASSOCIATION'S PHYSICAL ADDRESS

Too many managers, and attorneys for that matter, are putting their corporate clients at risk of being unable to obtain valid and enforceable judgments on behalf of their clients. Specifically, each year filling out the corporate annual report which is required to be sent to the Department of State, many managers often fail to appreciate the fact that the address of the "principal office" and the "mailing address" for the association, required to be stated by Section 617.1622, F.S., **ARE NOT** one in the same. As a result, managers typically insert the management company's office address for both the "principal office" of the association as well as the "mailing" address for the association. This seemingly inconsequential clerical short cut can have drastic and costly consequences for associations.

Section 55.10(1), F.S., provides that a *". . . . judgment, order, or decree does not become a lien on real property* ***unless the address of the person*** *who has a lien as a result of such judgment, order, or decree is contained in the judgment, order, or decree or an affidavit with such address is simultaneously recorded with the judgment, order, or decree."* Therefore, the failure to include the association's address in the body of the final judgment, or in an affidavit recorded with the judgment, could prevent that judgment from becoming a lien against any real property in the county where the judgment is recorded. Furthermore, this statute requires the address information to be updated at least every seven (7) years in order to maintain the lien on real property. **Simply stated, the statute requires that the address of the association be contained in the judgment, not the address of the management company**. For community associations the judgment must include the "principal office" of the association, not the office of the manager.

In *Hott Interiors vs. Fostock*, 721 So.2d 1236 (Fla. 4th DCA 1998), the court addressed the issue of *". . . . whether a final judgment becomes a lien on real estate when it contains the address of the plaintiff's attorney but not the address of the plaintiff."* After an extensive review of the facts and legislative history, the court held that *". . . . section 55.10(1), Florida Statutes (1997), requires that a final judgment contain the* ***judgment holder's address*** *to become a lien on real estate."* (emphasis supplied). The purpose of Section 55.10(1), F.S., is perfectly obvious: the requirement for the inclusion of the principal address of the judgment holder is to enable debtors and others to locate the creditor in the future.

The address that should be inserted into the judgment for an association is **the "principal address" for the corporation as shown on the annual report to the Department of State**. If, for instance, the association obtains a judgment today and lists the manager's address as the "principal address" for the association, what happens in the future if the association changes management companies? Is the manager's address truly the "principal address" of the corporation, or is it more like the attorneys' address in the *Fostock* case? Do you want to put the validity of the association's judgment lien at risk by not properly inserting a "principal address" into the annual report?

**Use of a Manager's Office as the physical Address of an Association may operate to Invalidate its judgment liens**

The "principal address" for the association should be a fixed and permanent address, such as the club house or onsite manager's office. In the absence of a fixed address (such as associations with no clubhouse or other amenities), the association should obtain and maintain a fixed address, such as a local post office box. For convenience sake, the manager's office can still be listed as the "mailing address" for the association on the corporate annual report, but the "principal address" on the annual report should be the fixed address of the association. In this way, the revolving carousel of managers, board members, and association counsel will not affect the judgment lien rights of the association.

### Recent Cases

- **The proper statute of limitations for a construction defect claim is four years from the date of turnover, and it may be further extended if the defects are "latent" in nature.**
- **A court's discovery order permitting determination of the nature of alleged handicaps of non-parties to a lawsuit properly balanced the rights of the litigants to information with the privacy rights of the non-parties.**



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# RECENT CASE SUMMARIES

In **Saltponds Condominium Association, Inc., vs. Walbridge Aldinger Company,** 33 Fla. L. Weekly D1218b (Fla. 3rd DCA April 30, 2008) Association sued the general contractor who built the condominium for construction defects and breach of warranties. Turnover of control of Association from developer control took place on August 1, 2002. Following turnover, Association retained an engineer to inspect the construction of the condominium. The engineer issued a report on August 17, 2005, which identified various alleged defects purportedly resulting from the improper design and construction of the condominium. Association then served a notice of claim upon contractor, the developer, and the project architect, in order to satisfy the requirements of Section 558.004, Fla. Stat. The notice of claim advised of the discovery of purportedly defective work set forth in the engineering report, and pursuant to Chapter 558, provided an opportunity to inspect and repair the work. Ultimately, the parties were unable to resolve the issues set forth in the notice of claim. Association filed the underlying lawsuit on August 21, 2006. An amended complaint was filed on September 7, 2006, which alleged that the defective work was ". . . . not readily recognizable by persons who lack special knowledge or training, or are hidden by components or finishes, and are latent." Contractor filed a motion to dismiss which alleged that the face of the complaint shows that the cause of action was not timely filed within the applicable three year statute of limitations. Contractor also alleged that the warranties provided for in Section 718.203, Fla. Stat., are not tolled during the period of developer control. Based upon these arguments, the trial court granted contractor's motion to dismiss. On appeal to the Third District Court of Appeal, the appellate court reviewed the history of construction defect warranty claims and noted that the Florida Supreme Court previously determined that the applicable limitations period to these types of construction defect claims is four (4) years. With respect to the statutory warranty claims, the court also looked at the language of Section 718.124, Fla. Stat., which states that applicable limitations periods ". . . . shall not begin to run until the unit owners have elected a majority of the members of the board of administration. In light of the foregoing, since the turnover date was August 1, 2002, Association had until August 1, 2006 to file its complaint. The appellate court noted however, that additional issues can serve to further toll the running of the statutes of limitation. Specifically, whether the alleged defects were "latent" or "patent" would determine when the limitations period begins to run. Since the amended complaint alleged that the defects were "latent", and because the engineering report identified several defects for which additional testing was recommended, it could not be said conclusively on a motion to dismiss that the statute of limitations bars the action as a matter of law. The appellate court reversed the trial court and remanded the case for further proceedings regarding the factual issues related to the latency of the defects.

In **Miller vs. West Vista Del Lago, Inc.**, 33 Fla. L. Weekly D1196a (Fla. 4th DCA, April 30, 2008) Owner sought a writ of certiorari seeking to quash a trial court order that required Owner to disclose the name and address of non-parties; the current and former clients ("residents") of her home-based, licensed assisted living facility ("ALF"), and their family members. The trial court ordered the discovery in a suit attempting to prevent Owner from running an ALF in her home in violation of covenants and restrictions. Association alleged that its covenants and restrictions prohibit Owner from operating an ALF within the community. Owner replied that the rules and regulations violated the Florida Fair Housing Act because the residents are "handicapped" as that term is defined in the act, and sought a motion for summary judgment on that issue. Association then sought the names and addresses of Owner's residents in order to confirm that they do indeed suffer (or suffered, in the case of former residents) from the medical conditions which Owner alleged caused them to be "handicapped" and fall within the Florida Fair Housing Action or within the scope of owner's license to operate the ALF. At the hearing, the trial judge permitted the disclosure of the names and addresses of the residents from the date of the lawsuit, but that only deposition by written questions would be permitted, and the court would have to approve the questions before the residents would be required to answer. On appeal, the Fourth District Court of Appeal noted that because the trial court's order implicates the privacy rights of non-parties, the appellate court had jurisdiction to hear the dispute. After reviewing the facts and the trial court's order, the appellate court dismissed the petition, finding that the trial court's order adequately balances the parties right to discovery and the privacy issues of the non-parties to the lawsuit.

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