
SPECIAL ASSESSMENT LIENS - OHIO

Williams v. Schneider

Court of Appeals of Ohio, Eighth District, Cuyahoga County - March 14, 2018 - N.E.3d - 2018 WL 1353291 - 2018 -Ohio- 968

Mortgagee, construction company, and other interested parties brought civil actions, in which city later intervened, as a result of the failure of a mixed-use development whose owner later pleaded guilty to criminal charges.

After consolidation of the cases and the appointment of a receiver, the Court of Common Pleas issued a determination of the priority of liens. Mortgagee and construction company appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On remand, the Court of Common Pleas entered summary judgment that mortgage on one of the five parcels that composed the development was a valid lien and that construction company's mechanics' liens were invalid, then later determined that city's special assessment was not a valid lien, denied construction company's supplemental motion for summary judgment as to the validity of company's judgment lien, and made determinations relating to the distribution of receivership assets. City, mortgagee, and construction company appealed.

On reconsideration, the Court of Appeals held that:

- City substantially complied with requirements to levy a special assessment on the development; but
  Trial court had authority to authorize the sale of the development free and clear of the city's lien by special assessment; but
- City's special-assessment lien had priority over other liens, except for the 10% secured-creditor allocation set up for the benefit of the receivership; but
- City was not entitled to collect legal fees, engineering fees, other professional fees, and miscellaneous expenses associated with its special-assessment lien;
- Legal description in mortgage on parcel in development was sufficient to provide constructive notice to construction company; and
- Trial court abused its discretion by ordering receiver to distribute to unsecured creditors any remaining funds in secured-creditor allocation account.

City substantially complied with requirements to levy a special assessment on failed mixed-use development, and thus any issues with compliance did not constitute a reason to hold the assessment invalid, despite argument that city began work on the project prior to the passage of the special assessment; then-owners petitioned the city to make the special assessment, then-owners knowingly waived defects and irregularities, and subsequent owners benefited from the improvements to the land.

Trial court had authority to authorize the sale of the failed mixed-use development free and clear of the city's lien by special assessment, where the total amount owed on the mortgages and liens on the development exceeded the value of the properties that composed it as estimated before the sale, and where the trial court determined that a sale of the properties other than one free and clear of liens, claims, and encumbrances would have adversely affected the receivership estate and would have been substantially less benefit to the receivership estate.

City’s special-assessment lien had priority over other lienholders as to failed mixed-use development, except for the 10% secured-creditor allocation set up for the benefit of the receivership, despite mortgagee’s argument that the city began construction on the development before the city passed an ordinance to proceed; only a fraction of work had been done on the project before the city passed its resolution and ordinance to proceed.

City was not entitled to collect legal fees, engineering fees, other professional fees, and miscellaneous expenses associated with its special-assessment lien on a failed mixed-use development, even though the fees may have been part of the project-development agreement where such fees were not included in city’s ordinance nor certified to the county auditor for collection.

Legal description in mortgage on parcel in a mixed-use development was sufficient to provide constructive notice to construction company that recorded a mechanic’s lien against the parcel, as would support finding that mortgagee’s lien had a higher priority than company’s mechanics’ lien, even though construction company might not have had a legal obligation to do a title search; title agent found that mortgage’s legal description for the parcel ended abruptly at a semicolon, and agent also noted that the description’s missing portions were along dedicated public roadways whose boundaries could be determined by other instruments of record.

Trial court abused its discretion by ordering receiver to distribute to unsecured creditors any remaining funds in secured-creditor allocation account from the proceeds from the sale of a failed mixed-use development, even though the remaining balance in the account was minimal; funds placed in the account were derived directly from the assets of each secured claim, and secured creditors had vested rights in the balance of the account by operation of law.