Good Things Come To Those Who Wait:
The Illinois Supreme Court’s Decision In
Spanish Court Two Condominium Association v. Carlson

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In 2012, the Illinois Appellate Court of the Second District (Lake and DuPage Counties) published its opinion in the Spanish Court Two Condominium Association v. Carlson case to the consternation of condominium association boards, unit owners, property managers and attorneys who represent condominium associations. This troubling appellate decision was then appealed to the Supreme Court of Illinois. After review of the written arguments filed by both sides and after hearing oral argument in the Fall of 2013, the Illinois Supreme Court has issued its long awaited opinion.

However, before getting into Illinois Supreme Court’s opinion, let us first review how we arrived at this point.

The Spanish Court Two saga began as what appeared to be a typical collection action for unpaid assessments. In 2010, the Spanish Court Two Condominium Association (the “Association”) filed a joint action forcible entry and detainer (eviction) lawsuit against the defendant unit owner for possession and money damages. In response to the Association’s complaint, the defendant filed a combined answer, affirmative defenses and a counterclaim, in which she admitted that she had not paid assessments. However, she also denied that she owed assessments due to alleged property damage to her condominium unit resulting from the Association’s alleged failure to maintain certain common elements. Specifically, she alleged that the Association failed to maintain the roof and brickwork directly above her unit, which resulted in water leakage damaging, among other things, drywall. She also alleged that the Association was responsible for causing her toilet to become inoperative and refused to repair it. Based on those allegations, she claimed the Association was barred from collecting assessment, or, alternatively, she was due a set off in the amount of the estimated cost of repairing her unit. Based on the same allegations, defendant’s counterclaim sought an award of monetary damages in the amount of the estimated cost of repairing her unit. The Association then filed a motion to strike the defendant’s affirmative defenses and sever the counterclaim, which motion the trial court granted. Thereafter a bench trial took place resulting in a judgment for possession and money damages against the defendant and in favor of the Association. The defendant appealed that judgment.

The Appellate Court ruled that the trial court properly severed the counterclaim, but erred in striking the affirmative defenses. In coming to its decision, the Appellate Court relied heavily on cases addressing landlord-tenant situations. It also relied upon basic concepts of contract law. The Appellate Court’s ultimate, and troubling, holding was that a unit owner may assert the defense that the board of managers breached its duty to maintain, repair and replace common
elements as justification for the nonpayment of assessments in an action brought by the board of managers against the unit owner for delinquent assessments.

Now (with a great sigh of relief) let us review the Illinois Supreme Court’s decision. In short, the Illinois Supreme Court reversed the Appellate Court’s decision to the extent that it allowed the unit owner to raise a “nullification defense.”

The only issue that was before the Illinois Supreme Court for consideration was whether an association’s alleged breach of its duty to maintain, repair and replace common elements is germane to a forcible entry and detainer lawsuit brought against a unit owner for delinquent assessments, which may then be asserted as a defense by the unit owner as justification for nonpayment of assessments. The Illinois Supreme Court referred to such defense as a “nullification defense,” that is, the failure on the part of the association to repair and maintain nullified the unit owner’s obligation to pay assessments. After reviewing the forcible entry and detainer statute and the Illinois Condominium Property Act, the Illinois Supreme Court found that the landlord-tenant relationship is not appropriately analogous to the association-unit owner relationship. The Illinois Supreme Court also found that a unit owner’s obligation to pay assessments is not contingent on the association’s carrying out its obligations. The Illinois Supreme Court recognized the potentially significant adverse impact on the association and other unit owners that a nullification defense may create. The Illinois Supreme Court also recognized that a delinquent unit owner is not without recourse; that unit owner may challenge the association’s record keeping, challenge the manner in which the assessment was adopted, take appropriate measures to remove board members, run for the board, or even take legal action.

THE ILLINOIS SUPREME COURT’S ULTIMATE HOLDING IS THAT A UNIT OWNER’S CLAIM THAT HIS OR HER DUTY TO PAY ASSESSMENTS WAS NULLIFIED DUE TO THE ASSOCIATION’S FAILURE TO REPAIR AND MAINTAIN COMMON ELEMENTS IS NOT A VIABLE DEFENSE TO A FORCIBLE ENTRY AND DETAINER (EVICTION) ACTION AS A MATTER OF LAW, AND THEREFORE, IS NOT GERMANE TO A FORCIBLE ENTRY AND DETAINER ACTION.

This decision is good news for condominium association boards, unit owners, property managers and attorneys who represent condominium associations across Illinois.