2015 IL App (1st) 143307-U

THIRD DIVISION
September 30, 2015

No. 1-14-3307

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

BOARD OF MANAGERS OF CORNELL COLUMBIAN CONDOMINIUM ASSOCATION, Plaintiff-Appellant,	)	Appeal from the Circuit Court of Cook County, Illinois, Municipal Department, First Judicial District.
v.	)	
	)	No. 13 M1 721134
CASSANDRA F. SMITH, Defendant-Appellee,	)	The Honorable Leonard Murray and The Honorable Alfredo Maldonado, Judges Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justice Lavin concurred in the judgment.
Presiding Justice Mason concurred in part and dissented in part.

ORDER

¶ 1 *Held*: The circuit court erred in granting summary judgment in favor of the foreclosure purchaser as to her liability on the monthly special assessment charges pursuant to section 9(g)(3) of the Illinois Condominium Property Act (765 ILCS 605/9(g)(3) (West 2010)). The purchaser failed to extinguish the special assessment lien on the property by failing to pay any portion of that special assessment upon purchase of the unit. Accordingly, the Board was entitled to recoup both the special assessment charges and the costs and fees incurred in pursuing an action to obtain them. The circuit court properly granted summary judgment in favor of the foreclosure purchaser with respect to her obligation on the six months of regular unpaid assessments as required under section 9(g)(4) of the Act (765 ILCS 605/9(g)(3) (West 2010)). The defendant was not liable for these assessments because a portion of those outstanding assessments was paid by the Board from rent collected on the unit, thereby extinguishing the defendant's obligation.

¶ 2 This cause of action arises from a joint forcible entry and detainer action filed by the plaintiff, Board of Managers of Cornell Columbian Condominium Association (hereinafter the Board), against the defendant, Cassandra Smith, a unit owner, for, *inter alia*, unpaid assessments, late fees, special assessment, and legal fees and costs pursuant to sections 9(g)(1), 9(g)(3), 9(g)(4) and 9(g)(5) of the Illinois Condominium Property Act (Condominium Property Act) (765 ILCS 605/9(g)(1), (g)(3), (g)(4), (g)(5) (West 2010)). The circuit court granted summary judgment in favor of the defendant, finding that she was not liable for any assessments or fees. The Board filed a motion to reconsider, which was denied by the circuit court. The Board now appeals contending that the court erred in ruling that the defendant was not liable for paying: (1) the monthly special assessment accruing after the judicial foreclosure sale on a prospective basis pursuant to sections 9(g)(1) and 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(1), (g)(3) (West 2010)); (2) six months of unpaid regular assessments as required under section 9(g)(4) of the Condominium Property Act (765 ILCS 605/9(g)(4) (West 2010)); and (3) any attorneys' fees and costs incurred by the Board in pursuing this action. For the reasons that follow, we affirm in part and reverse and remand in part.

¶ 3 I. BACKGROUND

¶ 4 A. Stipulated Facts

¶ 5 The parties agree and have stipulated to the following facts. The plaintiff is the Board of an Illinois condominium association--the Cornell Columbian Condominium Association (hereinafter the condominium association) established by a Declaration of Condominium Ownership (hereinafter the declaration) and recorded pursuant to the Condominium Property Act (765 ILCS 605/1 *et seq*. (West 2010)). The defendant is the owner of record of the property located at 1635 East 53rd Street, Unit 1, Chicago, Illinois 60615 (hereinafter the unit), which she

purchased at a judicial foreclosure sale. Both the defendant and the unit are subject to the declaration[1] and the Condominium Property Act. In addition, it is undisputed that as the owner of the unit, the defendant is "obligated to pay her proportionate share of the common expense of the unit pursuant to the declaration and the Condominium Property Act."

¶ 6 The parties agree that about two years before the defendant purchased the unit, in September 2010, the Board adopted a special assessment to be due and payable on a monthly basis over five years, unless paid in full no later than December 31, 2010. The record reveals that all unit owners were notified of this special assessment by letter dated November 16, 2010. According to that letter, the Board voted for a special assessment in the amount of $175,000 and applied for a loan to fund the work needed thus allowing the unit owners to pay the special assessment over a 60-month period. The letter included a spread sheet showing the amount of special assessment each unit owner would be responsible for if paid in one lump sum (with no interest) or in the amount of a monthly payment if paid over five years (including interest). In addition, the letter

[1] While the parties agree that the defendant is subject to the declaration, the declaration is not part of the record on appeal. In fact the record is devoid of any mention of the declaration, apart from a cursory citation to it by the Board in its response to the defendant's motion to strike. Therein, the Board alleges that Article XXII of the declaration, provides, in pertinent part: "if any unit owner is in default in the monthly payment of his pro-rata share of the common expenses or any other charges or assessments for thirty (30) days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all owners, to enforce collection thereof of (*sic*) to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due the costs of said suit, and other fees and expenses together with all interest and reasonable attorneys' fees to be fixed by the court."

explicitly instructed all owners "joining the loan and not paying in full in advance" that their payment "will be due monthly," and that if a unit owner chose to sell his or her unit he or she would "need to pay the special [assessment] in full at closing. The special [assessment] is not transferable to a new owner."

¶ 7 The parties further agree that on or about March 21, 2011, the Board adopted a resolution stating as follows: "Move that upon the sale of a unit during the life of the term of the association's current building improvement loan obligation the buyer be permitted to assume the special assessment in lieu of the lump sum payoff of outstanding loan indebtedness."[2]

[2] The record contains minutes of the Board's March 21, 2011, meeting, at which this resolution was adopted. These minutes reflect that a special meeting was held to address the request of the prospective buyers of the unit (presumably the defendant) to review and modify the payout plan for the special assessment and subsequent loan agreement with the bank, which was signed two months before. According to the meeting minutes, part of this special assessment agreement, was the policy that "the special assessment must be paid in full if the ownership of the unit changed and that the special must be paid in full at closing." Two points of view emerged at the meeting: (1) that the Board should change the current policy that requires the payment of the special assessment at the closing of a sale, because the buyer and the seller should have the right to work out the deal they desire and the current real estate environment requires flexibility; and (2) the Board should not consider changing a rule that was agreed to 2 months ago. According to the minutes, after a discussion, one of the Board members submitted the aforementioned resolution for a vote. Four of the five present members of the Board voted in favor, and one (the defendant herself) abstained, noting that she was not confident that the Board

¶ 8 The parties agree that the former unit owners did not pay the special assessment in full by December 31, 2010. In fact, the record reveals that the former unit owners stopped paying any assessments (regular, reserve and special) in February 2011. The parties stipulated that as a result, on or about June 17, 2011, the Board served a statutory demand for unpaid assessments and other lawful charges on the former unit owners pursuant to section 9-104.1 of the Illinois Code of Civil Procedure (Civil Procedure Code) (735 ILCS 5/9-104.1 (West 2010)). Subsequently, the Board entered into an agreement with the former unit owners wherein they agreed to surrender possession of the unit to the Board in exchange for the Board's promise not to pursue a forcible entry and detainer action against them. The parties agree that the Board took possession of the unit, rented it and collected rent on it from October 2011 through January 2013, for a total amount of $16,600.00

¶ 9 On August 21, 2012, a judgment of foreclosure was entered against the unit and the former unit owners. The parties agree that the condominium association was named as a defendant in that foreclosure action and that the Board was aware of the foreclosure action. The unit was sold to the defendant at a judicial foreclosure sale on December 11, 2012. The parties agree that the notice of this sale included language notifying the purchaser that she would be obligated to pay the assessments and legal fees pursuant to sections 9(g)(1) and 9(g)(4) of the Condominium Property Act (765 ILCS 605/ 9(g)(1), (g)(4) (West 2010)).[3] In addition, the parties stipulate that

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had the authority to change a rule agreed upon by the total membership of the association.

[3] The record contains a copy of the notice of that judicial foreclosure sale, which reads: "The purchaser of the unit other than a mortgagee shall pay the assessment and the legal fees required by subdivisions (g)(1) and (g)(4) of section 9 of the Condominium Act."

the defendant served as a member of the Board during the pendency of the foreclosure on the unit and at the time she purchased the unit at the judicial foreclosure sale.[4]

¶ 10 The parties further agree that immediately after the judicial foreclosure sale and beginning on January 1, 2013, the Board charged the following assessments on a monthly basis to the unit's account: (1) special assessment ($220.60); (2) regular assessment ($519.82); and (3) reserve assessment ($51.99). The parties agree that the defendant made monthly payments beginning on or about February 14, 2013, through September 12, 2013, which payments amount to a total sum of $4,416.71.[5]

¶ 11 It is also undisputed that on July 3, 2013, the Board served a demand for unpaid assessments and other lawful charges to the defendant pursuant to section 9-104.1 of the Civil Procedure Code (735 ILCS 5/9-104.1 (West 2010)). The defendant failed to pay the amount claimed in that demand within the prescribed time period, and this suit followed.

¶ 12 B. Procedural History

¶ 13 On September 5, 2013, the Board filed a forcible entry and detainer action against the

[4] The record below contains copies of minutes of three of the Board's meetings, which took place on March 21, 2011, March 31, 2011, and September 15, 2011, respectively. The minutes reveal that, although the defendant did not purchase the unit at the foreclosure sale until December 11, 2012, she was present as a Board member at each of the aforementioned 2011 meetings.

[5] The tenant's ledger for the unit, included in the record below, reveals that between February 2013 and September 2013, the defendant paid a monthly assessment in the amount of $571.81, which is the sum of the monthly regular assessment ($519.82) and the monthly reserve assessment ($51.99). The defendant, however, did not pay the monthly special assessment ($220.61).

defendant pursuant to section 9-102(a) of the Civil Procedure Code (735 ILCS 5/9-102 (West 2010)) asserting that it was entitled to possession of the unit and the amount of $8,766.48 in damages, as a result of the defendant's failure to pay the association's assessments and other common charges of said premises from December 31, 2012, and going forward, plus court costs and attorneys' fees.

¶ 14 The defendant appeared in court and requested a jury trial on October 13, 2013. After the Board filed a motion to strike the defendant's jury demand, on February 7, 2014, the defendant filed a motion to strike and dismiss the Board's complaint for forcible entry and detainer pursuant to section 2-619(a) of the Civil Procedure Code (735 ILCS 5/2-619(a) (West 2010)). Upon the Board's oral motion for substitution of judge, without objection from the defendant, the case was transferred to a new courtroom on February 11, 2014, and defendant was granted leave to file an amended motion to strike.

¶ 15 On February 24, 2014, the defendant filed her amended motion alleging that when she purchased the unit on December 11, 2012, through a Sheriff's sale as a result of a foreclosure action against the prior unit owners, the Board already had possession of the unit and was renting it a rate of $1,050 per month. According to the defendant, this arrangement was the result of an agreement entered into by the Board and the prior unit owners on September 15, 2011, according to which the Board agreed not to seek any arrears on the outstanding common assessments or the special assessment against the prior unit owners in exchange for, *inter alia*, the owner's relinquishing possession of the unit to the Board. The defendant alleged that according to that agreement, the prior unit owners admitted that they were responsible for the payment of assessments and other lawful charges due to the condominium association pursuant to the declaration and the Condominium Property Act, and that there presently remained an outstanding

balance of unpaid assessments and other lawful charges. The prior unit owners therefore agreed to surrender possession of the unit in rentable condition to the association, so that the association could rent it and "apply the collected rent to the current unpaid assessment and other lawful charges until such time as the unit's account is brought current." The prior unit owners also agreed that they would permit any foreclosure action to proceed against them in its normal course. In exchange, pursuant to the agreement, the association agreed not to pursue a forcible entry and detainer and/or breach of contract action for unpaid assessments and other lawful charges against the unit owners.

¶ 16 According to the defendant, the agreement between the prior unit owners and the Board further provided that "[i]n the event that unit owners sell the unit, whether through short sale or otherwise, the remaining outstanding balance of unpaid assessments and other lawful charges shall be paid at or before closing." In addition, according to the agreement, the association reserved the right to file a counterclaim in any foreclosure case against "the unit owners and the unit to foreclose its lien for unpaid assessments and other lawful charges."

¶ 17 Citing to the aforementioned language, the defendant argued that she was a third party beneficiary of the agreement between the Board and the former unit owners, and could enforce its terms to her advantage, so as to avoid any liability on the special assessment. In addition, the defendant argued that she was not responsible for the special assessment because the Board never contacted the mortgage companies to let them know what amounts, if any, were due and owing regarding the sale, nor filed a counterclaim in the mortgage foreclosure action against the former unit owners and the unit, to enforce any such lien. She also argued that the Board never specified the amount of special assessment that was due and owing at the time of the foreclosure

action, as it was required to do pursuant to sections 18 and 22.1 of the Condominium Property Act (755 ILCS 605/18, 22.1 (West 2010)).

¶ 18 In addition, with respect to the special assessment, the defendant alleged that at its March 31, 2011, meeting the Board passed a resolution which stated that the payment of the special assessment "as negotiated between a buyer and seller must include wording in the sales contract, which the purchaser agrees to." The defendant asserted that she never specifically agreed to the special assessment as part of the purchase of the unit at the foreclosure sale.

¶ 19 With respect to the "six month remedy" of the unit's proportionate share of common expenses which the Board alleged that she was liable for pursuant to section 9(g)(4) of the Condominium Property Act (765 ILCS 605/9(g)(4) (West 2010)), the defendant asserted that because the Board had possession of the unit and rented it from October 2011 until February 2013 (a date beyond the date when she purchased it at the foreclosure sale), it was estopped from requiring her to pay any outstanding regular assessments.

¶ 20 In support of her motion, the defendant attached numerous documents, including, *inter alia* copies of: (1) the certificate of sale for the unit dated December 21, 2011; and (2) the notice of sale for the unit naming the Board as a party to the foreclosure action and stating in relevant part that "[t]he purchaser of the unit other than a mortgagee shall pay the assessment and the legal fees required by subdivisions (g)(1) and (g)(4) of section 9 of the Condominium Act."; (3) the September 15, 2011, agreement entered into by the Board and the prior unit owners; (4) the Board's meeting minutes for September 15, 2011, whereby in executive session, the Board unanimously accepted the agreement entered into between the Board and the prior owners[6]; (5)

[6] As already noted above, the defendant was present at this meeting and voted.

minutes of the Board's March 21, 2011, meeting at which the defendant was present; and (6); minutes[7] of the Board's March 31, 2011, meeting.[8]

¶ 21 On March 18, 2014, the Board filed its response to the defendant's motion to strike and dismiss asserting that the defendant had failed to establish that she was entitled to dismissal as a matter of law. In doing so, the Board alleged that its June 17, 2011, statutory demand letter for the unpaid common expenses to the former unit owners, established its right to require the defendant to pay the statutory six months of regular assessments pursuant to section 9(g)(4) of the Condominium Property Act. See 765 ILCS 605/9(g)(4) (West 2010) (noting that the "purchaser of a condominium unit at a judicial foreclosure sale" has the duty to pay "the proportionate share, if any, of the common expenses for the unit, which would have become due in the absence of any assessment acceleration during the six months immediately preceding institution of an action to enforce the collection of assessment, and which remain unpaid by the unit owner during whose possession the assessments accrued."). The Board acknowledged that section 9(g)(4) of the Act (765 ILCS 605/9(g)(4) (West 2010)) does not define "institution of an action to enforce collection of assessments," but nevertheless asserted that the demand letter to

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[7] As already noted above, the minutes reveal that the defendant was present at this meeting as a voting member.

[8] We note that in this respect, those minutes state: "Board decided to follow advice of attorney. The payment of the special assessment as negotiated between buyer and seller must include wording in the sales contract as per attorney's recommendation. Also, seller should negotiate a hold harmless letter with the buyer. [Board member] moved to issue a letter accepting prior unit owner's language in memo of 3/31/11. [The defendant] seconds the motion. 5 nays. Letter declined."

the former unit owners should squarely fall into this definition so as to permit it to collect on the defendant.

¶ 22 In addition, the Board asserted that the defendant was not entitled to any set off or credit for the rent collected by the Board in January 2013 because such rent was applied to the "statutory six month remedy" that the defendant was obligated to pay pursuant to section 9(g)(4) of the Condominium Property Act (765 ILCS 605/9(g)(4) (West 2010)). The Board explained that it applied the rent collected from October 2011 to January 2013 in the following manner: (1) rents received between October 2011 through December 2012 were first used for current month's charges (regular assessment, special assessment, reserve assessment, late fee and legal fees) with any remaining balance applied to the oldest outstanding debt on the account—coincidentally, the debt that the Board asserted the defendant owed pursuant section 9(g)(4) of the Condominium Property Act (765 ILCS 605/9(g)(4) (West 2010)); and (2) rent received in January 2013 was applied in full to the defendant's aforementioned debt pursuant to section 9(g)(4) (765 ILCS 605/9(g)(4) (West 2010)).

¶ 23 With respect to the special assessment demand, the Board first acknowledged that in adopting the special assessment in September 2010, it initially instructed the unit owners that in the event they sold their units, any remaining unpaid balance of the special assessment would need to be paid in full at closing. The Board further acknowledged that on March 21, 2011, it adopted a new payment method for paying the special assessment--requiring that in the event a unit owner sold his or her unit, the seller and buyer were free to negotiate as part of the sale transaction which of them would be responsible for the balance of the special assessment. The Board, however, argued that it never contemplated that the March 21, 2011, resolution would

apply to foreclosure sales, but rather intended that it apply solely to seller/buyer transactions, so that the defendant remained liable as to the special assessment.

¶ 24 In support of this allegation, the Board attached an affidavit of its president, attesting, *inter alia*, to the aforementioned facts, and explicitly stating: "At no time did the Board consider that the requirement for the remaining balance of the special assessment to be paid at closing or by the buyer on a going forward basis apply (*sic*) to a foreclosure sale. The Board was only thinking about situations in which individual unit owners are selling their units."

¶ 25 In addition, the Board argued that the defendant was not a third party beneficiary of the agreement between the Board and the original unit owners because she neither reaped a direct benefit from that contract, nor could establish that the contract itself revealed the intent of the parties that she reaps such a benefit. The Board further asserted that its failure to provide the defendant with a statement as to the exact amount of special assessment was irrelevant because the defendant was statutorily obligated to request the amount in order to receive it (see 765 ILCS 605/18, 22.1 (West 2010)), and because, in any event, the defendant had ample notice of the special assessment as she served on the Board at all relevant times during the foreclosure sale.

¶ 26 In support of its pleading, the Board attached several documents including, *inter alia*: (1) an account ledger of the previous owner's obligations to the association; (3) the November 16, 2010, notice to all owners regarding the special assessment; and (4) the affidavit from the Board's president explicitly affirming all of the allegations made in the pleading regarding the Board's actions, and attaching a spreadsheet of the Board's application of the rents for the unit to the debt owed by the prior unit owners.

¶ 27 On March 27, 2014,[9] the circuit court entered an order denying the defendant's motion to strike, explaining that "the issues raised cannot be addressed in the context of a 2-619 motion." The court then stated that the following issues were "better addressed" in the context of a motion for summary judgment: (1) whether the special assessment carried over to the defendant after the foreclosure; (2) whether the defendant was liable for all or any portion of the statutory six month remedy (765 ILCS 605/9(g)(4) (West 2010)); and (3) whether rent collected in January 2013 should be applied to the statutory six month remedy. The court then ordered the parties to "submit a joint stipulation of facts" and "additional supplementary written support of their respective sides, including without limitation case law as to the special assessment issue."

¶ 28 On May 15, 2014, the parties filed their stipulated facts. In addition, the Board filed its supplemental brief. Therein, the Board cited to sections 9(f)[10] and 18(a)(8)(vi)[11] of the Condominium Property Act (765 ILCS 605/9(f), 18(a)(8)(vi) (West 2010)) arguing that the special assessment adopted by the Board continues after the judicial foreclosure sale as a monthly charge, which the defendant is obligated to pay on a going forward basis, along with all other common expenses. Analogizing the continuation of monthly common expense charges

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[9] The court apparently held a hearing on the defendant's motion to strike on March 20, 2014, upon which the matter was continued to March 27, 2014, for a ruling. The record before us, however, is devoid of any transcript from that hearing.

[10] This section reads: "Payment of any assessment shall be in amounts and at times determined by the board of managers." 765 ILCS 605/9(g)(f) (West 2010).

[11] This section reads: "The bylaws shall provide for at least the following *** (vii) that the board of managers may adopt separate assessments payable over more than one fiscal year." 765 ILCS 605/18(a)(8)(vi) (West 2010).

after a foreclosure sale to a bankruptcy, the Board also contended that post-foreclosure debt should not be dischargeable. Accordingly, it asserted that the defendant was liable on the monthly special assessments starting January 1, 2013, and going forward.

¶ 29 The Board then conceded that some of the rent it collected on the unit was used towards covering the regular and special assessments, and therefore sought only the following relief from the circuit court: (1) possession of the unit; (2) award of money damages for unpaid regular, reserve and special assessments, late fees and other lawful charges for the time period beginning January 1, 2013, to the time of trial and/or the prove-up; (3) an award of damages for the statutory six month remedy pursuant to 9(g)(4) of the Act (765 ILCS 5/9(g)(4) (West 201)) in the amount of $1253.48 (as off-set by the collected rent); and (4) costs and attorneys' fees spent in litigating this matter (765 ILCS 5/9(g)(5) (West 2010)).

¶ 30 On May 16, 2014, the defendant filed a motion for summary judgment essentially reiterating the arguments it had made in its motion to strike and dismiss. In addition, the defendant cited to section 15-1509 of the Illinois Mortgage Foreclosure Law (Mortgage Foreclosure Law) (735 ILCS 5/15-1509 (West 2010)), arguing that the Board was barred from seeking the special assessment since it was a party defendant to the foreclosure action but did nothing to perfect its lien at the time.

¶ 31 After hearing arguments by the parties,[12] on June 16, 2014, the court entered a handwritten order finding that: (1) the defendant was not liable for monthly special assessment charges beginning January 1, 2013, going forward because by analogy to federal case law involving bankruptcy, the special assessment accrued when adopted by the Board and was subsequently wiped out by the foreclosure proceeding against the subject unit; (2) the defendant was not liable

[12] We note that the record does not contain a transcript of this proceeding.

for unpaid assessments and legal fees under sections 9(g)(4) and 9(g)(5) of the Condominium Property Act (765 ILCS 5/9(g)(4), (5) (West 2010)) because the prior owners tendered possession to the Board on or about September 2011, and therefore the association was in possession of the unit and collecting rent during the time period triggering section 9(g)(4) (765 ILCS 605/9(g)(4) (West 2010)). The court continued the matter for a prove-up regarding the amount of regular assessments the defendant owed beginning January 1, 2013, to the present.

¶ 32 On July 14, 2014, the Board filed a motion to reconsider, which the court denied on July 21, 2014. On September 23, 2014, the parties proceeded to a hearing[13] regarding the prove-up on regular assessments, at which the court entered judgment in favor of the defendant. The Board now appeals.

¶ 33 III. ANALYSIS

¶ 34 On appeal, the Board does not challenge the court's order regarding the defendant's obligation to pay regular assessments beginning January 1, 2013. Instead, the Board challenges the grant of summary judgment in favor of the defendant only with respect to the following: (1) the defendant's liability on the monthly special assessment installments accruing after the judicial foreclosure sale on a prospective basis (starting January 1, 2013) pursuant to sections 9(g)(1) and 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(1), (g)(3) (West 2010)); (2) the defendant's liability for the statutory six-month remedy pursuant to section 9(g)(4) of the Condominium Property Act (765 ILCS 605/9(g)(4) (West 2010)); and (3) her liability for the Board's attorneys' fees and costs.

¶ 35 The defendant responds that the Board has forfeited its right to collect any assessments from

[13] We note that we are again without a transcript from this proceeding.

the defendant except for the one month (January 2013) that she has already paid and they accepted because: (1) the Board entered into an agreement with the prior unit owners according to which it agreed that if the former unit owners sold their unit "whether through short sale or otherwise, the remaining outstanding balance of unpaid assessments and other lawful charges shall be paid at or before closing;" (2) despite its own resolution necessitating it, the Board did not ensure that there was a memorialized agreement between the defendant and the prior unit owners regarding who would be responsible for payment of the special assessment; (3) the Board did nothing to perfect its lien for the special assessment on the unit even though it was a named party to the foreclosure proceedings; and (4) the Board rented the unit and collected rent prior to the judicial foreclosure sale and applied the rent to cover regular assessments, special assessment, and late fees, thereby relieving the defendant of any obligation on those assessments pursuant to section 9(g)(4) of the Condominium Property Act (see 765 ILCS 605/9(g)(4) (West 2010)).

¶ 36 Before addressing the merits of the parties' contentions, we begin by setting forth the well-established principles regarding summary judgment. Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005 (West 2010); see also *O'Gorman v. F.H. Paschen, S.N. Neilsen, Inc.*, 2015 IL App (1st) 133472, ¶ 82 (quoting *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992)); *Carlson v. Chicago Transit Authority*, 2014 IL App (1st) 122463, ¶ 21; *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). In determining whether the moving party is entitled to summary judgment, the court must construe the pleadings and evidentiary material in the record in the

light most favorable to the nonmoving party and strictly against the moving party. *Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 186 (2002); see also *Pearson v. DaimlerChrysler Corp.*, 349 Ill. App. 3d 688, 697 (2004). A genuine issue of material fact exists where the facts are in dispute or where reasonable minds could draw different inferences from the undisputed facts. *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 724 (2010); see also *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114 (1995); but see, *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999) ("Mere speculation, conjecture, or guess is insufficient to withstand summary judgment."). We review a trial court's entry of summary judgment *de novo* and may affirm on any ground appearing in the record. *Private Bank & Trust Co. v. EMS Investors, LLC*, 2015 IL App (1st) 141689, ¶ 15; see also *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill. 2d 342, 349 (1998).

¶ 37 The issues in this appeal address several provisions of the Condominium Property Act (765 ILCS 605/1 *et al*. (West 2010)) and their relationship to each other and to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509(c) (West 2010)), specifically who should be responsible for the payment of unpaid assessments (regular and special) after a condominium unit is sold at a foreclosure sale, and for what amounts. In other words, whether unpaid assessments by the prior unit owners (as liens running with the property) are automatically extinguished upon a judicial foreclosure sale, or whether a purchaser at such a sale needs to act (*i.e.*, by paying assessments going forward, and in what amount) in order to extinguish the lien.

¶ 38 The Condominium Property Act provides in pertinent part that "[i]t shall be the duty of each unit owner *** to pay his proportionate share of the common expenses. " 765 ILCS 605/9(a) (West 2010). Section 9(g)(1) of the Act provides that failure or refusal of any unit owner "to make any payment of the common expenses *** when due, the amount thereof together with any

interest, late charges, reasonable attorney fees incurred *** and costs of collection shall constitute a lien on the interest of the unit owner in the property ***." 765 ILCS 605/9(g)(1) (West 2010).

¶ 39 With respect to the purchase of a condominium unit at a judicial foreclosure sale, section 9(g)(3) of the Condominium Act provides that a purchaser at a judicial foreclosure sale, including a mortgagee, has "the duty to pay the unit's proportionate share of the common expenses for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale." 765 ILCS 605/9(g)(3) (West 2010). Section 9(g)(3) further provides that such payment "confirms the extinguishment" of a lien created under section 9(g)(1) of the Act "by virtue of the failure or refusal of a prior unit owner to make payment of common expenses, where the judicial foreclosure sale has been confirmed by order of the court." 765 ILCS 605/9(g)(3) (West 2010). In addition, section 9(g)(4) of the Act states that a purchaser at a foreclosure sale, other than a mortgagee, "shall have the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the 6 months immediately preceding institution of an action to enforce the collection of assessments, and which remain unpaid by the owner during whose possession the assessments accrued." 765 ILCS 605/9(g)(4) (West 2010). Section 9(g)(4) further provides that "if the outstanding assessments are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title." (765 ILCS 605/9(g)(4) (West 2010)). Finally, section 9(g)(5) specifies that a notice of a judicial foreclosure sale must "state that the purchaser of the unit other than a mortgagee shall pay the assessments and the legal fees required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act." 765 ILCS 605/9(g)(5) (West 2010).

¶ 40 On the other hand, the Mortgage Foreclosure Law provides in pertinent part:

> "Claims Barred: Any vesting of title by a consent foreclosure pursuant to Section 15-1402 or by deed pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure and (ii) all claims of any nonrecord claimant who is given notice of the foreclosure in accordance with paragraph (2) of subsection (c) of Section 15-1502, notwithstanding the provisions of subsection (g) of Section 2-1301 to the contrary." 735 ILCS 5/1509(c) (West 2010).

¶ 41 Our appellate court recently considered the interrelationship of these provisions in *1010 Lakeshore Ass'n v. Deutsche Bank National Trust Co.*, 2014 IL App (1st) 130962, ¶¶ 11-17, *leave to appeal granted*, No. 118372, January 28, 2015 (23 N. E. 1207). In that case, the majority held that pursuant to the plain language of section 9(g)(3), a lien created "under section 9(g)(1) for unpaid assessments by a previous owner is not fully extinguished following a judicial foreclosure and sale until the purchaser makes a payment for assessments incurred after the sale." *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 12. The court also held that section 9(g)(1) of the Act (765 ILCS 605/9(g)(1) (West 2010)) creates a lien on the property and "not a personal judgment against the foreclosure purchaser," when such assessment payments are not made "for the first full month following the judicial foreclosure sale." *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 17.

¶ 42 In doing so, the majority rejected the purchaser's contention that pursuant to section 15-1509(c) of the Mortgage Foreclosure Law (735 ILCS 5/1509(c) (West 2010)), it could not be required to pay any assessments incurred prior to the foreclosure and sale because all outstanding claims on the property that have been the subject of a foreclosure and sale are extinguished and

the purchaser takes the property free of any such claims. *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 14. The court held that because both sections 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(3) (West 2010)) and 15-1509(c) of the Mortgage Foreclosure Law (735 ILCS 5/1509(c) (West 2010)) addressed the same subject, the more specific of the two statutes, namely section 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(3) (West 2010)) should control. *Deutsche Bank,* 2014 IL App (1st) 130962, ¶ 14. As the majority explained:

> "[W]hen a general statutory provision and a specific statutory provision relate to the same subject, the statute relating to that one specific subject must prevail over the statute designed to apply to cases more generally. [Citation.] Thus, section 9(g)(3), which is contained in the Condominium Property Act and relates to the payment of assessments by the purchaser of a condominium unit at a judicial foreclosure sale and the effect the making of such a payment has on the status of a lien arising from a previous owner's failure to make assessment payments, is a specific statutory provision that must control over the general rule of foreclosure law cited by [the purchaser]." *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 14.

¶ 43 Accordingly, in that case, the court concluded that because the purchaser at the foreclosure sale had paid no assessments whatsoever after it purchased the unit, it never extinguished the preexisting lien created by section 9(g)(1) on the property, and was therefore liable on that lien. *Deutsche Bank,* 2014 IL App (1st) 130962, ¶ 17.

¶ 44 In her dissent, Justice Liu rejected the majority's analysis of the relevant statutory provisions, noting that the majority now "creates the rule that a mortgagee who takes title to a condominium unit *** as the purchaser of the unit in a foreclosure sale--is liable to the condominium association for unpaid assessments incurred by the mortgagor (*i.e.*, the previous owner) prior to the date on which the mortgagee took title, even if the condominium association

was a named party in the foreclosure suit and had its lien interest terminated in that suit." *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 34 (Liu, J., dissenting). Justice Liu opined that this holding is inconsistent with the plain language of both section 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(3) (West 2010)) and section 15-1509(c) of the Mortgage Foreclosure Law (735 ILCS 5/1509(c) (West 2010)), and essentially "allows an association to revive a lien on the property that was previously extinguished in the foreclosure action brought by the mortgagee, by initiating a forcible entry and detainer claim after the mortgagee takes title." *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 34 (Liu, J., dissenting).

¶ 45 According to Justice Liu, sections 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(3) (West 2010)) and 15-1509(c) of the Mortgage Foreclosure Law (735 ILCS 5/1509(c) (West 2010)), are not conflicting, and rather may be read together and "in reference to one another, so that they may be given harmonious effect." (Internal quotations omitted.) *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 37 (Liu, J., dissenting). These provisions, when read together, according to Justice Liu "establish a complementary procedure for extinguishing a lien held by a condominium association following a judicial foreclosure sale." *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 38 (Liu, J., dissenting). As Justice Liu explained in her dissent:

> "Section 15-1509(c) of the Mortgage Foreclosure Law applies in the first instance when a condominium association has been named a party in the foreclosure action. It expressly states that 'all claims of parties to the foreclosure and *** nonrecord claimant who is given notice of the foreclosure' are barred after title is vested with the purchaser of the property. 735 ILCS 5/15-1509(c) (West 2008); see also 735 ILCS 5/15–1501(a),(b) (West 2008) (distinguishing between necessary parties in a foreclosure suit and permissible parties). Section 9(g)(3) of the Act, on the other hand, applies in the situation where a condominium

> association with an enforceable lien was not named as a party in the foreclosure suit or provided with notice of foreclosure as a nonrecord claimant. It provides an avenue for the purchaser to extinguish a preexisting lien that survives the foreclosure action, by paying the assessments that accrue after the date of the sale. 765 ILCS 605/9(g)(3) (West 2008). Section 9(g)(3) does not, however, create a *** vehicle for liability on a lien interest that has been terminated in the foreclosure suit and therefore no longer exists." *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 38 (Liu, J., dissenting).

¶ 46 Under the facts of that case, Justice Liu opined that because the association was a party in the foreclosure action and had an opportunity to assert its lien based on the outstanding assessments owed to it by the prior unit owner before final judgment was entered in the action, and there was nothing in the record to establish that the judgment of foreclosure provided for any specific relief in favor of the association, it was reasonable to conclude that the lien was extinguished when the court approved the judicial foreclosure sale. *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 39 (Liu, J., dissenting).

¶ 47 After thoughtful consideration, we reject Justice Liu's dissent and agree with the rationale of the majority in *Deutsche Bank*. In light of the dearth of case law addressing a condo unit purchaser's liability for special assessments beginning after the mortgage foreclosure sale pursuant to the Condominium Property Act, we find *Deutsche Bank* applicable to the facts of this case. Accordingly, applying the principles articulated therein, we turn to the merits of the parties' contentions raised in this appeal.

¶ 48 A. Special Assessment

¶ 49 The Board first argues that pursuant to section 9(g)(3) of the Condominium Property

Act (765 ILCS 605/9(g)(3) (West 2010)), as a matter of law it was entitled to collect the special assessment from the defendant beginning in January 2013 (which is the first day of the first month after the date of the judicial foreclosure sale). As noted above, that section provides that a purchaser of a condominium unit at a judicial foreclosure sale, including a mortgagee, has "the duty to pay the unit's proportionate share of the *common expenses* for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale." (Emphasis added.) 765 ILCS 605/9(g)(3) (West 2010). The Board argues that a special assessment is a "common expense" under the Condominium Property Act, and therefore falls squarely within the defendant's obligations under section 9(g)(3) (765 ILCS 605/9(g)(3) (West 2010)).

¶ 50 The defendant, on the other hand, argues, without citing to any authority, that "common expenses" under section 9(g)(3) (765 ILCS 605/9(g)(3) (West 2010)) include only regular assessments, and that by their very nature regular and special assessments cannot and should not be equated.

¶ 51 The parties agree that the Condominium Property Act does not define either a regular or a special assessment, and that currently there is no Illinois case expressly addressing this issue. They therefore ask us to interpret the statute. It is well-established that in construing a statute a court's primary objective is to ascertain and give effect to the intent of the legislature. *Prazen v. Shoop*, 2013 IL 115035, ¶ 21. "The most reliable indicator and best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Prazen*, 2013 IL 115035, ¶ 21. Words and phrases should be construed as a whole and in light of other relevant provisions of the statute and must not be interpreted in isolation. *Prazen*, 2013 IL 115035, ¶ 21. In addition, each word, clause and sentence of a statute must be given a reasonable meaning, if possible, without rendering it superfluous. *Prazen*, 2013 IL 115035, ¶ 21.

Courts should not read into the statute "limitations, exceptions, or other conditions not expressed by the legislature." *People v. Glisson*, 202 Ill. 2d 499, 505 (2002). When the language of a statute is plain and unambiguous, "we must apply the statute without resorting to further aids of statutory construction." *People v. Montoya*, 373 Ill. App. 3d 78, 81, (2007) (citing *People v. Collins*, 214 Ill. 2d 206, 214 (2005)).

¶ 52 Section 2(m) of the Condominium Property Act defines "common expenses" as "the proposed or actual expenses affecting the property, including reserves, if any, lawfully assessed by the Board of Managers of the Unit Owner's Association." (765 ILCS 605/2(m) (West 2010)). Our court has interpreted "[t]his definition" as giving the Board "broad latitude in determining common expenses, including fines and late charges." *Glens of Hanover Condominium Ass'n v. Chiaramonte*, 159 Ill. App. 3d 287, 291 (1987). Such broad latitude is expressly contemplated under the statute, which provides that the "payment of *any* assessments shall be in amounts and at times determined by the board of managers." 765 ILCS 605/9(f) (West 2010).

¶ 53 What is more, section 18(a)(8) of the Act, which addresses the minimum requirements that must be included in an association's bylaws with respect to notice of the annual budget and assessments to the condominium owners, expressly refers to a special assessment as a "common expense." See 765 ILCS 605/18(a)(8)(iii) (West 2010)). Specifically subsection (iii) of section 18(a)(8) provides that "any *common expense* not set forth in the budget or any increase in assessments over the amount adopted in the budget shall be separately [specially] assessed against all unit owners." 765 ILCS 605/18(a)(8)(iii) (West 2010)). In addition, subsection (vi) explicitly permits the "board of managers *** [to] adopt separate [special] assessments payable over more than one fiscal year." 765 ILCS 605/18(a)(8)(vi) (West 2010). Accordingly, when read in context of these provisions, it is clear that the plain language of section 2(m) of the Act

contemplates that "common expenses" not be limited to regular assessments, but also include special assessments, as "expenses affecting the property." 765 ILCS 605/2(m) (West 2010). We therefore conclude that "common expenses" as defined by section 2(m) (765 ILCS 605/2(m) (West 2010)) and used in section 9(g)(3) of the Act (765 ILCS 605/9(g)(3) (West 2010)) include special assessments.

¶ 54 Accordingly, applying *Deutsche Bank* to the facts of this case, we hold that the unpaid portion of the unit's special assessment attached as a lien on the property and could have been extinguished only by the defendant's payment of that special assessment for the first month after her purchase of the unit at the judicial foreclosure sale. *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 17. Since it is undisputed that the defendant failed to make this payment, the lien for the unpaid special assessment was not extinguished and she is liable for it. *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 17.

¶ 55 The defendant nevertheless asserts that she is not responsible for payment of the monthly special assessments accruing after the date of the judicial foreclosure sale because she did not negotiate with the seller to take on that responsibility, as was required under the Board's own March 21, 2011, resolution, as well as the agreement entered into between the Board and the prior unit owners. We disagree. The defendant's allegations, taken as true, are nevertheless directly rebutted by the affidavit of the Board's president, which attests that the Board never contemplated that any such resolution should be applied to a foreclosure sale, but rather intended that it apply only buyer/seller transactions. Accordingly, under the circumstances of this case, we find that the defendant is liable for the special assessment. See *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 17.

¶ 56 B. Six-Month Statutory Remedy

¶ 57 We next address the Board's contention that the circuit court erred when it found that as a matter of law it was not entitled to the statutory six-month assessments pursuant to section 9(g)(4) of the Act (765 ILCS 605/9(g)(4) (West 2010)). As already noted above, that section reads in pertinent part:

> "The purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee, *** shall have the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the six months immediately preceding institution of an action to enforce the collection of assessments, and which remain unpaid by the owner during whose possession the assessments accrued. If the outstanding assessments are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments, which accrued before he or she acquired title." 765 ILCS 605/9(g)(4) (West 2010).

¶ 58 For the reasons that follow, we find that this section is inapplicable to the defendant because at least a portion of the outstanding assessments was paid "during the action to enforce the collection of the assessments" from the prior unit owners. 765 ILCS 605/9(g)(4) (West 2010). The last sentence of section 9(g)(4) plainly states that "[i]f the outstanding assessments are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments, which accrued before he or she acquired title." 765 ILCS 605/9(g)(4) (West 2010). While section 9(g)(4) (West 765 ILCS 605/9(g)(4) (West 2010)) does not specify how much of the outstanding assessments must be paid in order to absolve the purchaser of her obligation to pay her portion of the six months of unpaid assessments accrued before she acquired title, the only reasonable reading of this provision, is that "any" amount of

the outstanding assessments will suffice. In other words, the requirement cannot be that the outstanding assessments must be paid in full so as to absolve the purchaser of her obligation, because if it were, the purchaser would clearly not be obligated to pay any assessments, since there would be none remaining to pay (*i.e*., none would be "outstanding"). As already noted above in construing a statute we must give "each word, clause and sentence of a statute" its "reasonable meaning" and, if possible, one that will not render that clause superfluous. See *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 15 (The court should interpret the statute, so that no term or provision "is rendered superfluous or meaningless"); see also *Prazen*, 2013 IL 115035, ¶ 21 ("Each word, clause and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous."); *Deutsche Bank*, 2014 IL App (1st) 130962, ¶ 13. Since any other reading of the statute would render the last sentence of section 9(g)(4) (765 ILCS 605/9(g)(4) (West 2010)) superfluous, we hold that under the plain language of the statute any obligation by the foreclosure purchaser for the six months of unpaid assessments, is wiped out as soon as *any* portion of the outstanding assessments is paid.

¶ 59 Applying the plain language of section 9(g)(4) (765 ILCS 605/9(g)(4) (West 2010)) to the facts of the present case, it is apparent that the Board is not entitled to the six month statutory assessment remedy. In that respect, we note that the Board does not dispute that there was an "action to enforce the collection of assessments" pursuant to section 9(g)(4) (765 ILCS 605/9(g)(4) (West 2010) and in fact urges us to find that such an action was instituted when, on June 17, 2011, it served the prior unit owners with the statutory demand letter for unpaid assessments pursuant to section 9-104.1 of the Code of Civil Procedure (735 ILCS 5/9–104.1(a) (West 2010)), a necessary prerequisite to filing a forcible entry and detainer action. It is further undisputed that prior to the defendant's purchase of the unit, the Board took possession of the

unit and rented it between October 2011 through January 2013, applying the collected rents to cover a portion of the outstanding assessments owed by the prior unit owners. As such, since some of the outstanding assessments were paid during the action to enforce the collection of assessments, the defendant has no obligation to pay any assessments, which accrued before she acquired title. 765 ILCS 605/9(g)(4) (West 2010)). We therefore affirm the trial court's grant of summary judgment on this issue. See *Private Bank & Trust Co.*, 2015 IL App (1st) 141689, ¶ 15 ("We review the entry of summary judgment *de novo* and may affirm on any ground appearing in the record").

¶ 60 C. Attorneys' Fees

¶ 61 We next address the Board's contention that it is entitled to reasonable attorneys' fees and costs incurred in pursuing its forcible entry and detainer action against the defendant. There can be no doubt that the Condominium Property Act authorizes the collection of such attorneys' fees and costs. See 765 ILCS 605/9(g)(1) (West 2010) ("If any unit owner shall fail or refuse to make any payment of the common expenses***, the amount thereof together with any interest, late charges, *reasonable attorney fees* incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers, or any applicable statute or ordinance, and *costs of collections* shall constitute a lien on the interest of the unit owner in the property ***." (Emphasis added.)); see also 765 ILCS 605/9.2(b) (West 2010) ("Any attorneys' fees incurred by the Association arising out of a default by any unit owner, *** in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense."). Accordingly, since for the reasons articulate above, we hold that the Board was entitled to collect the special assessment from the defendant, we also find that the

Board is entitled to collect reasonable attorneys' fees and costs incurred litigating this matter. Accordingly, we remand this issue to the trial court for a determination of the amount of those reasonable attorney's fees and costs.

¶ 62 III. CONCLUSION

¶ 63 For the aforementioned reasons, we affirm in part, and reverse and remand in part.

¶ 64 Affirmed in part, reversed and remanded in part.

¶ 65 PRESIDING JUSTICE MASON, concurring in part and dissenting in part:

¶ 66 I concur in the majority's reasoning regarding the distinction (or lack thereof) between a foreclosure purchaser's liability for special assessment installments, as opposed to regular monthly assessments, that accrue following the purchase of a condominium unit at a foreclosure sale. Smith is properly liable for installment payments of special assessments post-dating her purchase of the unit just as she, like any other condominium purchaser, is liable for regular monthly assessments commencing the first month after the purchase. Thus, the majority properly rejects the trial court's rationale for refusing to require Smith to pay any portion of the special assessment duly voted by the Association in 2010 on the theory that the entirety of the unit's *pro rata* share of the special assessment was extinguished in the foreclosure proceeding.

¶ 67 But the discussion of the majority and dissenting views in *1010 Lakeshore Ass'n v. Deutsche Bank National Trust Co.*, 2014 IL App (1st) 130962, ¶¶ 33-42, is academic in the context of this case and unnecessary to the outcome. This is because, as discussed below, the Association here does not seek to impose liability on Smith for past due special assessment installments accruing prior to the foreclosure sale and, therefore, there is no need to choose sides in that debate.

¶ 68 As I understand the Association's claim here, it seeks to hold Smith liable for assessments,

comprised of special assessment installments plus regular and reserve assessments, accruing *after* the date of her purchase of the unit at the foreclosure sale. Smith has cited no authority either in the trial court or on appeal supporting the proposition that special assessment installments accruing post-foreclosure sale are in any way affected by the extinguishment of the lien on the unit for unpaid special assessments installments that pre-date the sale. (In fact, Smith's brief, which is in every respect non-compliant with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013), cites absolutely no relevant authority.) Given that the Association is not seeking to enforce its lien for any pre-foreclosure, past due assessments against Smith, it is unnecessary to discuss what the outcome would be if it was. Rather, this case presents the straightforward and noncontroversial proposition that, absent an agreement to the contrary, any purchaser of a condominium unit, at a foreclosure sale or otherwise, is responsible to pay assessments on the unit commencing the month following closing. On that point, I agree that the trial court's order precluding the Association from recovering unpaid special assessment installments must be reversed.

¶ 69 On the second issue presented in this case, I disagree with the majority's construction of section 9(g)(4) of the Act (765 ILCS 605/9(g)(4) (West 2010)) to preclude the Association from collecting the statutory six-month remedy from Smith because it collected "some" of the past due assessments incurred by the prior owners during the period it was in possession of the unit. (see ¶ 59: "[S]ince some of the assessments were paid during the action to enforce the collection of assessments, [Smith] has no obligation to pay any assessments, which accrued before she acquired title.") As the record reflects, at the time the Association served its statutory demand letter on the prior unit owners in June 2011, there was a delinquency in unpaid regular, special and reserve assessments plus monthly late fees totaling $4,393.10. Before the Association took

possession of the unit in October 2011, another three months of delinquent assessments and late fees accrued totaling $2527.26, for a total delinquency as of October 1, 2011 of $6,920.36. From October 2011 through January 2013, the Association collected rent on the unit totaling $16,600. During this same period of time an additional $12,678.72 in monthly assessments accrued and were paid from the rental revenue. Thus, the rent collected by the Association during the period it was in possession of the unit was sufficient to satisfy current assessments and offset, in part, the outstanding delinquency. But as of December 2012 when Smith purchased the unit at the foreclosure sale, there remained a delinquency of approximately $3,000.

¶ 70 The language of section 9(g)(4) makes clear that a condominium association is not entitled to a double recovery; that is, if the association succeeds in recovering the "outstanding assessments" in its action against the prior unit owners, it does not need the statutory "remedy" and may not seek to recover that amount from the purchaser at the foreclosure sale. But nothing in this section suggests that if an association is partially successful in collecting past due assessments, the foreclosure sale purchaser should be absolved entirely of the obligation to pay the statutory remedy. And, in fact, common sense dictates otherwise.

¶ 71 Purchasers of condominiums at foreclosure sales are aware that they are purchasing distressed property and that, in all likelihood, assessments on the unit are delinquent. Here, Smith, as an existing member of the Association and a member of its Board, had actual knowledge of the arrears in assessments. In section 9(g)(4), the legislature struck a balance between the right of a foreclosure purchaser to take title to the property free and clear of prior liens and a condominium association's ability to remain financially solvent by requiring the foreclosure purchaser to satisfy at least a portion of past due assessments accrued by the prior owner. Without section 9(g)(4)'s remedy, existing unit owners would be forced to bear the entire

financial burden of the delinquency, while the purchaser at a foreclosure sale would escape any responsibility for the unit's *pro rata* share of delinquent assessments. But according to the majority's logic, if an association collects even a nominal portion of the past due assessments, existing unit owners must shoulder the remainder of the delinquency without any participation by the new owner.

¶ 72 Nothing in section 9(g)(4) suggests that if at the time of the foreclosure sale, less than six months of the assessments are delinquent because the association has been partially successful in its efforts to collect the delinquency, the foreclosure purchaser should be relieved entirely of the obligation to satisfy the statutory six-month remedy. Rather, at most, logic dictates that the foreclosure purchaser would be entitled to a setoff of the amounts actually recovered by the association against the amount of the statutory remedy.

¶ 73 As applied here, the foregoing construction of section 9(g)(4) yields the conclusion that the Association was entitled to seek from Smith the remaining $3,000 in delinquent assessments as of the date of the foreclosure sale, but it was not entitled to the full six-month remedy ($4,754.52). Such a construction avoids the absurd result of penalizing condominium associations for diligently pursuing collection of past due assessments from the owners who incurred those charges by depriving associations entirely of the remedy the legislature provided for them. See *People v. Hanna,* 207 Ill.2d 486, 498 (2003) ("where a plain or literal reading of a statute produces absurd results, the literal reading should yield;" describing the principle as "deeply rooted"). Because I believe the Association was entitled to recover a portion of the six-month remedy from Smith after she purchased the unit at the foreclosure sale, I would reverse the trial court's finding in favor of Smith and remand with directions to enter judgment in favor of the Association.

¶ 74 Finally, I concur that the Association is entitled to attorney fees incurred in this case, but, for the reasons expressed, believe that the fees awarded on remand should encompass both claims.