

Supreme Court

No. 2002-610-Appeal.
(PC/02-3907)

Borland Realty :
v. :
Lexington Court Condominiums. :

ORDER

The plaintiff, Borland Realty (Borland), appeals from the denial of its request for a preliminary injunction against the defendant, Lexington Court Condominium Association (hereinafter “the Association”), to stop the Association from selling unit 4 at Lexington Court Condominiums, 210 Lexington Street, Providence at a foreclosure sale.

The following facts are not in dispute. When Borland purchased unit 4 from its previous owners in June 2001, plaintiff was aware that defendant had placed a lien for unpaid condominium fees, plus interest, costs and expenses in the land evidence records for the city of Providence. After the title transferred to plaintiff, the Association began sending notices to Jeffrey Rose, the principal of Borland, to collect the unpaid fees. However, Mr. Rose disputed the amount due, and was only willing to pay six months’ worth of unpaid condominium fees. Although the defendant sent letters via first class mail and facsimile transmission, Mr. Rose claims that he did not receive the notices because the correspondence was sent to the wrong address.

In July 2002, pursuant to its lien, defendant sold unit 4 at a foreclosure sale. The plaintiff’s request for a temporary restraining order enjoining the foreclosure sale was denied by a Superior Court hearing justice. Thereafter, in August 2002, the parties

appeared before a different justice relative to plaintiff's request for a preliminary injunction to restrain defendant from transferring title to the purchasers at the foreclosure sale. The hearing justice ruled that he would not restrain the transfer of title to a bona fide purchaser for value; then determined how the sale proceeds should be allocated. The trial justice directed that the Association be paid the outstanding condominium fees, attorney fees not to exceed \$2,500, and out-of-pocket expenses. The plaintiff filed a notice of appeal.

The plaintiff's appeal is not properly before this Court. As a general rule, there is no appeal from the denial of a prayer for a preliminary injunction. Simpson v. Vose, 685 A.2d 285 (R.I. 1986) (mem.) (case 1) (citing Oakley v. Wood, 423 A.2d 1176, 1177 (R.I. 1981) (per curiam)). See also Muratore v. Laprad, 733 A.2d 722 (R.I. 1999) (mem.). Although in certain instances, where the denial of injunctive relief has an element of finality, we have relaxed the general rule and permitted review by way of the discretionary writ of certiorari. However, in Muratore v. Laprad, in which the property in dispute had been sold, we held that the appeal was not properly before us and the issues were moot. We are satisfied that this case presents the identical issue and we decline to pass upon the denial of a preliminary injunction.

For the reasons stated, the plaintiff's appeal is denied and dismissed and the case is remanded to the Superior Court.

Entered as an Order of this Court this **16th** day of **February, 2004**.

By Order,

S/S _____
Clerk