

In re Darrell Sain and Evelyn Tellez
13-13325-BKC-LMI

In this chapter 13 case, the joint Debtors filed a Motion to Value and Determine Secured Status of Lien for a jointly-owned condominium in an attempt to strip off liens held by multiple condominium associations. The Debtors alleged that the condominium had no equity in excess of the first and second mortgage holders. Additionally, the Debtors argued that the Associations' liens were inferior to the first and second mortgage holders. Because the equity was insufficient and the Associations' liens were inferior, the Debtors claimed that the Associations' liens should be stripped. The Associations objected, arguing that their respective liens were in fact superior to the first and second mortgage holders. The Associations also argued that even if the Debtors are able to strip off the Associations' liens, the Associations have the right to collect any unpaid balance for assessments, if and when the Debtors sell the condominium, from any subsequent purchaser.

The Court concluded that the Associations' liens may be superior to the first mortgage holder depending on the language in the Associations' declarations and the timing of when the liens were recorded, but the Court could not make such determination without an evidentiary hearing. Additionally, the Court held that even if the Debtors were able to strip off the Associations' liens, the statutory *in rem* liability established by Florida Statutes §§720.3085 and 718.116(b) remains with the property and unpaid liens would need to be paid by future purchasers in accordance with the terms of those statutes.