

Twenty years on, court ruling changes condo law

'You can forget about a 30-year mortgage.'



OWNER'S RIGHTS: Gene Savory, president of the Bowen Court association, at the condominiums. Twenty years after the Bowen Court condominiums were built, a court decision is giving residents collective ownership of an undeveloped parcel of the property.

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Two decades after Rhode Island was rocked by the 1990s credit union crisis, lingering complications of the Depositors Economic Protection Corp. era are still being unraveled in unpredictable areas, such as condominium development.

This summer, a DEPCO-era dispute involving an East Providence condominium complex was settled by the R.I. Supreme Court in a decision that could alter how developers and lenders approach large condominium projects.

The decision, in *Alessi v. Bowen Court Condominium Association*, strengthens the position of condominium associations to take control of undeveloped parcels within multi-stage projects when those projects go through foreclosure.

“Given the current economic climate, additional foreclosure scenarios such as the one presented here are sure to arise,” wrote **Frank A. Lombardi**, the Providence attorney who represented the victorious condominium association in the case.

“When this happens, associations and their representatives now will have the ability to refuse to grant developers and their banks permission to build – and they may also be able to negotiate for compensation in exchange for the possible extension or resurrection of developer rights.”

Christopher A. Anderson, who represented the plaintiff, Dr. Joseph Alessi, said the decision could make lenders more cautious in financing large developments out of concern, that if things go wrong and efforts to foreclose take too long, they could be left with nothing.

“I think the Supreme Court just put a landmine out there for lenders,” Anderson said.

The roots of the case go back to 1989, when developer Bowen Court Associates started building a complex of townhouse-style units on 6.7 acres of land off Willett Avenue in the Riverside section of East Providence.

The idea was to build out the complex in stages and, as is customary with such projects, a provision was made for one of the parcels in the back of the property to be withdrawn from the condominium association if, for economic or other reasons, developing it became undesirable. The withdrawal provision had a limit of 10 years.

Bowen Court received a loan from Rhode Island Central Credit Union, secured by the withdrawable land, but by 1992, before the complex had been finished, the developer went bankrupt.

Rhode Island Central Credit Union foreclosed on the property in June 1992, but by the end of July, the credit union itself collapsed like so many others in the state.

In response to the credit union crisis, Rhode Island created DEPCO to liquidate the credit unions’ remaining assets.

One of the assets DEPCO took over was Bowen Court and the undeveloped parcel of land at the rear of the complex, which it sold in 1994 to Alessi for \$52,000.

For the next seven years, the property remained untouched and Alessi, like the Central Credit Union and DEPCO before him, made no effort to remove it from the condominium. Alessi was apparently unaware that the 10-year right to withdraw the property had expired in 1999.

In 2001, Alessi tried to withdraw the lot from the condominium, but the condominium association refused, citing the expiration of the development rights.

Alessi sued and the case wound its way through the Rhode Island legal system on appeals for the next decade until the Supreme Court decided the matter in June.

In his appeal for Alessi, Anderson argued that under state condominium law, once a piece of property is foreclosed upon, the mortgagee has the right to remove any “withdrawable” portion of the property from the condominium association. That provision in the law, he noted, does not come with a time limit.

On behalf of the condominium association, Lombardi argued that this reading would have given the original lender, DEPCO, or Alessi a new power to withdraw the property from the condominium that the original developer never had, one that would exist in perpetuity.

In reality, he argued, those who take over the property after foreclosure “stand in the same shoes” as the developer with no special rights.

The court agreed and ruled that once the 10-year limit had expired, the parcel was no longer “withdrawable” under the condominium law and no longer subject to the foreclosure provision.

The result of the decision is that, 20 years after the Bowen Court condominiums were created, residents there now collectively own, as the condo association, the vacant wooded lot at the back of the complex. Alessi’s investment is gone.

Gene Savory, president of the Bowen Court Condominium Association, said residents at the complex are excited to see the case finally over and the land put under their control. So far, association members have voted not to build anything on the land

“We have decided to keep it open space, maybe make a gazebo and benches and keep it a tranquil area,” Savory said. “People don’t want tennis courts or a swimming pool.”

Lombardi said he does not know what the association plans to do with it, if anything, but that options range from selling it, turning it into tennis courts, or just letting it remain untouched.

Anderson, who said he was “boggled” by the decision, notes that, while the court stressed protecting the residents, the decision has the odd result of granting them

ownership of property they never purchased, nor had any reason to suspect they would have rights to when their homes were built.

The bigger impact, Anderson said, could be that without any rights above those of a developer, lenders may be reluctant to offer long-term loans on multi-stage condominium projects secured with withdrawable parcels for fear that if the timing was poor or a foreclosure took too long, they will be left with nothing.

“You can forget about a 30-year mortgage,” Anderson said. “They might need to foreclose by year eight in order to start the withdrawal process.” •