



6-D

MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Jeanneen Witt, Town Manager
CC: Aref Joulani, Planning & Development Department
FROM: David Hooker, Code Enforcement Officer
DATE: July 18, 2016
SUBJECT: Lien Reduction Request
George & Helen Savas / U.S Bank National Association
92 Maura Terrace

The aforementioned owners have requested a reduction of a Code Enforcement lien that was imposed on February 11, 2016 and continued to accrue to May 14, 2016 in the amount of \$9,300.

The case involved a vacant home with a dilapidated fence which a lis pendens was filed before the Town imposed the current lien.

Staff attempted to make contact with owners (Mr. & Mrs. Savas) for several months before this case went to the Enforcement Board, but to no avail. During this time, staff also reached out the lending institution which filed the lis pendens and started a relationship to correct the violations as soon as it became feasible.

The lending institution took possession of the property on April 15, 2016 and within 30 days the property became compliant.

Staff continued the dialog with the lender and spoke to them about staff recouping costs associated with this particular case.

Florida Statutes 48.23(D) states "Except for the interest of persons in possession or easements of use, the recording of such notice of lis pendens, provided that during the pendency of the proceeding it has not expired pursuant to subsection (2) or been withdrawn or discharged, constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens. If the notice of lis pendens expires or is withdrawn or

discharged, the expiration, withdrawal, or discharge of the notice does not affect the validity of any unrecorded interest or lien”.

The aforementioned statutes state that since our lien was imposed on the property after the lis pendens, then our lien was barred from to the enforcement of all interests and liens.

Attorney General opinion 93-77 which the City of Tarpon Springs essentially asked if recording of a lis pendens bars foreclosure of code enforcement lien recorded after notice of lis pendens. In this opinion it came back in the affirmative that the City of Tarpon Springs would be barred from enforcement of such lien.

With this information our Enforcement Board lien is also barred from such action as well.

During my tenure in Code Enforcement I have come across this same scenario on multiple occasions. With the majority of these types of cases came during the 2008-2012 economic downturn that we all experienced.

During that time, I made several contacts inside lending institutions and brokered professional relationships that help recoup costs associated with the enforcement of our adopted codes and help maintain the health, safety and welfare of our community.

Staff Recommendation:

According to the Florida Statutes the Town’s Enforcement Board lien has been barred from collecting any outstanding liens due to the lis pendens being filed before our lien was recorded.

I have spoken with the lenders which is now the owners of the property in question. Thus, keeping them aware of the Town’s property maintenance standards which we are proud of.

The current owner (US Bank National Association), through the agent has agreed to releasing funds for the outstanding lien to cover our costs associated with this particular case. After speaking with them they indicated that they are willing to pay the amount of \$3,000 which is the exact amount of the lien imposed for the days that they owned the property and to make the repairs.

It is also a third of the original outstanding lien, which would not be recouped if staff didn’t have a working relationship with this lender.

It is recommended that we accept this offer that has been discussed, since there is no obligation by the lender to pay the Town since the lis pendens was filed before our lien was imposed.

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT OF THE STATE
OF FLORIDA, IN AND FOR VOLUSIA COUNTY
CIVIL DIVISION**

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE OF THE BAFC 2006-6

Plaintiff,

vs.

GEORGE P. SAVAS A/K/A GEORGE PERRY
SAVAS; HELEN L. SAVAS A/K/A HELEN
LAINA SAVAS; SUNTRUST BANK;
UNKNOWN SPOUSE OF GEORGE P.
SAVAS A/K/A GEORGE PERRY SAVAS;
UNKNOWN SPOUSE OF HELEN L. SAVAS
A/K/A HELEN LAINA SAVAS; UNKNOWN
TENANT #1; UNKNOWN TENANT #2

Defendant(s),

Case No:
Division: Civil

NOTICE OF LIS PENDENS

TO DEFENDANT(S) GEORGE P. SAVAS A/K/A GEORGE PERRY SAVAS; HELEN L. SAVAS
A/K/A HELEN LAINA SAVAS; SUNTRUST BANK; UNKNOWN SPOUSE OF GEORGE P.
SAVAS A/K/A GEORGE PERRY SAVAS; UNKNOWN SPOUSE OF HELEN L. SAVAS
A/K/A HELEN LAINA SAVAS; UNKNOWN TENANT #1; UNKNOWN TENANT #2
AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING:

- (a) The plaintiff has instituted this action against you seeking to foreclose a mortgage with respect to the property described below;

303925/SAVAS/lmh2

11000
2015 31078 CICI

(b) The plaintiff in this action is:

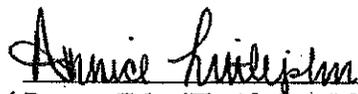
U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE OF THE BAFC 2006-6

(c) The case number of the action is as shown in the caption.

(d) The property that is the subject matter of this action is in Volusia County, Florida, and is described as follows:

**LOT 4, MAURA TERRACE, ACCORDING TO THE PLAT THEREOF, RECORDED
IN MAP BOOK 36, PAGE 121, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY,
FLORIDA.**

DATED THIS 2nd DAY OF July, 2015.


For Rovena Zaho/Florida Bar # 95791
The Law Offices of Daniel C. Consuegra, P.L.
9210 King Palm Drive, Tampa, FL 33619-1328
Phone: (813) 915-8660/Fax: (813) 915-0559
attorneynotice@consuegralaw.com

BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA

TOWN OF PONCE INLET, FLORIDA,
A municipal corporation,

Petitioner,

vs.

CASE NO.: 42253

GEORGE P. SAVAS and
HELEN L. SAVAS,

Respondents/Owners.

ORDER IMPOSING FINE

This cause was heard on the 22nd day of February, 2016 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondents and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. The property which is the subject of this code enforcement action is located at 92 Maura Terrace, Ponce Inlet, Florida with Volusia County Property Tax ID 6419-09-00-0040 and is more particularly described as:

LOT 4 MAURA TERRACE MB 36 PG 126 PER OR 5133 PGS
4347-4348 PER OR 5839 PG 4346

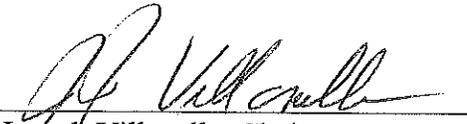
2. On February 3, 2016 an Order was entered finding Respondents in violation of Section 301.2 of the International Property Maintenance Code and requiring the violation to be cured before February 22, 2016.
4. Respondents have failed to cure the cited violation within the time allowed in the Notice of Violation.

BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

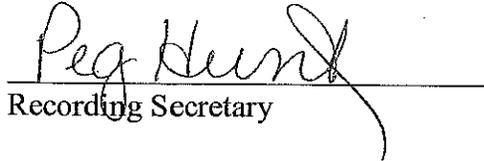
5. A fine of \$100.00 per day for each day the property remained in non-compliance with the Code Enforcement Board's Order is imposed in this case with such fine beginning on February 11, 2016 and continuing to accrue until Respondents have cured the violation.

6. Upon recordation of a certified copy of this Order in the Public Records of Volusia County, Florida, this Order shall constitute a lien against the real and personal property of Respondents.

ORDERED at Ponce Inlet, Volusia County, Florida on this 3rd day of March, 2016.

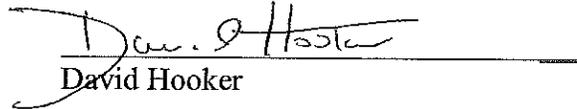

Joseph Villanella, Chairperson
Code Enforcement Board

ATTEST:


Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondents by U.S. Mail, First Class, the 4th day of March 2016.


David Hooker

Document# 2016-040668 # 2
JOK: 7225
PAGE: 1338
Diane N. Matousek
Volusia County, Clerk of Court

Florida Attorney General Advisory Legal Opinion

Number: AGO 93-77

Date: November 4, 1993

Subject: Recording of notice of lis pendens

Mr. Herbert Elliott
City Attorney
City of Tarpon Springs
Post Office Box 1575
Tarpon Springs, Florida 34286-1575

RE: LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS--MUNICIPALITIES--LIS
PENDENS--recording of notice of lis pendens bars foreclosure of code
enforcement lien recorded after recording of notice of lis pendens.
s. 48.23, F.S.

Dear Mr. Elliott:

You ask substantially the following question:

Does notice of lis pendens, recorded pursuant to s. 48.23, F.S.,
prior to a code enforcement board lien recorded pursuant to Ch. 162,
F.S., operate to bar the foreclosure of the code enforcement lien
where the proceeding for which notice of lis pendens was recorded
has been prosecuted to judicial sale and the property sold to a good
faith purchaser?

In sum:

The recording of a notice of lis pendens pursuant to s. 48.23, F.S.,
bars the foreclosure of a code enforcement lien recorded after the
notice of lis pendens where the proceeding for which notice of lis
pendens was recorded has been prosecuted to judicial sale and the
property sold to a good faith purchaser.

Chapter 162, F.S., the Local Government Code Enforcement Boards Act,
seeks to provide "an equitable, expeditious, effective, and
inexpensive method of enforcing any codes and ordinances in force in
counties and municipalities, where a pending or repeated violation
continues to exist." [1] Local governments are authorized to create
one or more code enforcement boards which may, among other things,
impose administrative fines. [2]

Section 162.09(3), F.S., provides that a certified copy of the order imposing a fine recorded in the public records shall constitute a lien against the land on which the violation exists. The Act does not provide for the priority of such lien. You note, however, that the Second District Court of Appeal struck down a county ordinance that provided that a code enforcement lien was superior to other existing liens.[3]

The doctrine of "lis pendens" has been generally defined as the jurisdiction, power or control that courts acquire over property that is involved in a suit pending the continuance of the action and until final judgment in such action.[4] The purpose of notice of lis pendens is to warn all persons that title to the property is in litigation and that they are in danger of being bound by an adverse judgment.[5]

Section 48.23(1)(a), F.S., provides that no action in any of the state or federal courts in this state operates as a lis pendens on any real or personal property until a notice of the commencement of the action is recorded in the office of the clerk of circuit court of the county where the property is located. Such notice must contain the names of the parties, the time the action was instituted, the name of the court in which it is pending, a description of the property involved or affected, and a statement of the relief sought as to the property. Section 48.23(1)(b), F.S., provides:

"The filing for record of such notice of lis pendens shall constitute a bar to the enforcement against the property described in said notice of lis pendens of all interests, except for interests of persons in possession, or easements in use and liens including but not limited to federal tax liens and levies, unrecorded at the time of filing for record such notice of lis pendens unless the holder of such unrecorded interest or lien shall intervene in such proceedings within 20 days after the filing and recording of said notice of lis pendens. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of the property described in said notice of lis pendens, the said property shall be forever discharged from all such unrecorded interests and liens. In the event said notice of lis pendens is discharged by order of the court, the same shall not in any way affect the validity of any unrecorded interest or lien."[6] (e.s.)

Thus, the statute imposes a bar against the enforcement against the property described in the notice of lis pendens of liens unrecorded at the time of the filing of the notice of lis pendens. Moreover, the statute specifically provides that if the proceedings are prosecuted to a judicial sale of the property described in the lis pendens notice, the property is forever discharged from "all such

unrecorded interests and liens." The term "such" has generally been defined as referring back to and identifying something previously described or specified.[7] Thus, the phrase "all such unrecorded interests and liens" (e.s.) would appear to refer to the antecedent description of interests and liens, i.e., those liens that were unrecorded at the time of the filing of the notice of lis pendens.

Your inquiry concerns a code enforcement lien recorded after the filing of the notice of lis pendens. Thus, s. 48.23, F.S., would appear to bar the enforcement of such lien against the property described in the notice of lis pendens unless the city, as holder of the unrecorded lien, intervenes within 20 days after the filing and recording of the notice of lis pendens or the notice of lis pendens is discharged by order of the court.[8] If the proceedings are prosecuted to judicial sale of the property described in the notice of lis pendens, such property would be discharged from liens unrecorded at the time of filing.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] Section 162.02, F.S.

[2] See s. 162.05, F.S., providing for the organization of such boards; and s. 162.09, F.S., authorizing the imposition of administrative fines by an enforcement board upon notification by the code inspector that an order of the board has not been complied with by the set time or upon finding that a repeat violation has been committed.

[3] *Sarasota County v. Andrews*, 573 So.2d 113 (2 D.C.A. Fla., 1991).

[4] See *De Pass v. Chitty*, 105 So. 148 (Fla. 1925); *Marchand v. DeSoto Mortgage Company*, 149 So.2d 357 (2 D.C.A. Fla., 1963). And see 35 Fla. Jur.2d *Lis pendens* s. 1.

[5] See *Ross v. Breder*, 528 So.2d 64 (3 D.C.A. Fla., 1988); *Berkley Multi-Units, Inc. v. Linder*, 464 So.2d 1356 (4 D.C.A. Fla., 1985) (purpose of lis pendens is to alert creditors, prospective purchasers and others that title to property is involved in litigation).

[6] See s. 48.23(2), F.S., which provides that the notice of lis pendens is not effectual beyond one year from the commencement of

the action unless the relief sought is disclosed by the initial pleading to be founded on a duly recorded instrument or on a lien claimed under Part I, Ch. 713, F.S., against the property involved, except when the court extends the time on reasonable notice and for good cause.

[7] See Webster's Third New International Dictionary *Such* p. 2283 (unabridged ed. 1981) (having a quality already or just specified, used to avoid repetition); 83 C.J.S. *Such* p. 771.

[8] As noted *supra*, s. 48.23(2), F.S., provides that a notice of lis pendens is not effectual beyond one year from the commencement of the action unless the relief is founded on a duly recorded instrument or lien claimed under Part I, Ch. 713 or the court extends the time on reasonable notice and for good cause. Section 48.23(4), F.S., states that the period of time mentioned above does not include the period of pendency of any action in an appellate court.