

app. 1

APPENDIX

APPENDIX A

22CA0880 Parkway v Tran 08-24-2023

COLORADO COURT OF APPEALS

DATE FILED: August 24, 2023

Court of Appeals No. 22CA0880

City and County of Denver District Court No. 21CV30547

Honorable J. Eric Elliff, Judge

Parkway Condominiums I Homeowners Association, Inc.

Plaintiff-Appellee,

v.

Hanh Ho Tran,

Defendant-Appellant.

JUDGMENT AFFIRMED AND CASE

REMANDED WITH DIRECTIONS

Division B

app. 2

Opinion by Judge Grove

Tow and Schutz, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

ANNOUNCED AUGUST 24, 2023

Altitude Community Law, P.C. Kate M. Leason, Lakewood,
Colorado, for

Plaintiff-Appellee

Hanh Ho Tran, Pro Se

Or' 0'

1 In this judicial foreclosure action, defendant, Hanh
Ho Tran, appeals the court's judgment in favor of plaintiff,
Parkway Condominiums I Homeowners Association, Inc.
(the HOA). We affirm.

I. Background

2 Hoanh Van Tran and Hanh Ho Tran purchased the
property in question, which is part of common interest
community subject to the Colorado Common Interest
Ownership Act (CCIOA), in 2007. In 2018, the HOA, which
administer the community pursuant to the Declaration for
Parkway Condominiums I (Declaration), filed suit against
Hanh Ho Tran (who we will refer to hereafter as Tran) for
failing to pay monthly assessments as required by the
HOA's Declaration. After a bench trial, the court entered
judgment against Tran for \$9,976.67.

3 Tran did not pay the judgment and remained behind
on monthly assessments. Under CCIOA, section 38-33.3-
316(1), C.R.S. 2022, the HOA has a statutory lien on an
owner's unit arising out of any assessment levied or fine
imposed against that unit owner. Accordingly, in January
2021, the HOA's Board of Directors voted to foreclose on
that lien as provided by section 38-33.3-105, C.R.S. 2022.

4 The HOA filed a complaint for foreclosure under
C.R.C.P. 105 in February 2021, and the court held a bench
trial in May 2022. At the conclusion of the trial, the court
found that Tran's unpaid assessments, together with late
fees and interest, totaled more than \$22,000, and that the
HOA complied with its collection policy and CCIOA in

attempting to collect on Tran's unpaid assessments. The court also took judicial notice of the HOA's previous money judgment against Tran and adopted the finding in that case "that [the HOA] complied with its Collection Policy and [CCIOA]" when pursuing the money judgment.

5 According, the court entered judgment against Tran in the amount of \$55,313.06, a sum that included the principal, interest, late fees, attorney fees, and court costs, and ruled that the property "may be sold by [the HOA] to satisfy the judgment." Tran appeals from this order.

II. Standard of Review and Applicable Law

6 We review a judgment following a bench trial as a mixed question of fact and law. *Premier Members Fed. Credit Union v. Block*, 2013 COA 128, paragraph 26 "[We defer to the trial court's credibility determinations and will disturb its findings of fact only if they are clearly erroneous and are not supported by the record." *Amos v. Aspen Alps 123, LLC*, 2012 CO 46 paragraph 25. We review the court's application of the governing legal standards de novo. *May v. Petersen*, 2020 COA 75, paragraph 10.

III. Analysis

7 As best we can discern, Tran raises five arguments on appeal: (1) the HOA violated "the basic law" and "the law of name," thereby rendering the current and previous judgments void; (2) the HOA violated C.R.C.P. 11; (3) service of process in the current case and/or the previous case was insufficient; and (4) the HOA breached the terms of the Declaration and its own collection policy. She also

contends that the trial court erroneously awarded attorney fees to the HOA. We address each issue in turn.

A. Unpreserved Issues

8 Tran did not raise the first ("the basic law" and "the law of names"), second (C.R.C.P. 11), or third (service of process issues listed above in the trial court. They are therefore unpreserved and we decline to consider them further. See *O'Connell v. Biomet, Inc.*, 250 P.3d 1278, 1278 (Colo. App. 2010) (in civil cases, where an argument "was not presented in the trial court," and is raised as a "new argument for the first time on appeal," it is unpreserved and will not be addressed absent extraordinary circumstances not present here).

B. HOA's Compliance with the Declaration and Collection Policy

9 Construing the record liberally, see *Minshall v. Johnston*, 2018 COA 44, paragraph 10, we conclude that Tran did argue in the trial court that the HOA failed to comply with the Declaration and its own collection policy in connection with the foreclosure proceedings. We observe, however, that there is record support for the trial court's finding that the HOA "followed its policies and procedures for collection of assessments," which, exhibits admitted at trial showed, mirror those in CCIOA. (See section 38-33.3-316(11)(a) (providing that the HOA's lien may be foreclosed "in like manner as a mortgage on real estate," so long as "[t]he balance of the assessments and charges secured by its lien... equals or exceeds six months of common expense

assessments," and "[t]he executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis"). First, the HOA presented evidence that the month assessment was \$308, but that Tran's arrearages exceeded \$15,000. Thus, "[t]he balance of the assessments and charges secured by [the HOA's lien]... equal[ed] or exceed[ed] six months of common expense assessments" owed by Tran. Section 38-33.3-316(11)(a)(I). Second, the HOA presented evidence that it initiated foreclosure proceedings only after the Board adopted a resolution to do so. Section 38-33.3-316(11)(a)(II).

10 To the extent that Tran asserts in her opening brief that the HOA was required to "provide a [n]otice for foreclosure before filing a lawsuit for foreclosure after the delinquency equal or exceeds six months," we find nothing in the record to support her understanding of the Declaration and collection policy.

11 Accordingly, because the record supports the trial courts finding that the HOA complied with the Declaration and the HOA's collection policy in pursuing foreclosure, we discern no error.

C. Attorney Fees

12 Pursuant to C.A.R. 39 and section 38-33.3-123(1)(c), C.R.S. 2022, the HOA is entitled to appellate attorney fees as the prevailing party in this appeal, in an amount to be determined by the trial court on remand. *Vista Ridge*

Master Homeowners Ass'n v. Arcadia Holdings at Vista Ridge, LLC, 2013 COA 26, paragraph 22.

IV. Disposition

13 The judgment is affirmed. The case is remanded to the district court for a determination of the reasonable attorney fees and costs incurred by the HOA on appeal.

JUDGE TOW and JUDGE SHCUTZ concur.

STAFF HONORARY CLERK OF THE COURT

To ensure that the court's orders are properly entered and that the court's records are accurate, the court has ordered that the clerk of the court be responsible for entering the court's orders and for maintaining the court's records. The clerk of the court is also responsible for providing the court with the necessary information to enter the court's orders and for providing the court with the necessary information to maintain the court's records.

The court has also ordered that the clerk of the court be responsible for providing the court with the necessary information to enter the court's orders and for providing the court with the necessary information to maintain the court's records. The clerk of the court is also responsible for providing the court with the necessary information to enter the court's orders and for providing the court with the necessary information to maintain the court's records.

STAFF HONORARY CLERK OF THE COURT

Court of Appeals
State of Colorado
2 East 14th Avenue
Denver, CO 80203

Pauline Brock
Clerk of the Court

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Roman,

Chief Judge

DATED: January 6, 2022

Notice to self-represented parties: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at www.cobar.org/appeallate-pro-bono or contact the Court's self-represented litigant coordinator at 720-625-5107 or appeals.selfhelp@judicial.state.co.us.

APPENDIX B

(Note: The Transcribing Solutions, LLC made an error by including Defendant Hoanh Van Tran name in this trial 5/17/2022 transcript. Ref to this page 1 of the transcript.)

1	Denver County District Court	
	1437 Bannock Street	
	Denver, Co 80202	
	Parkway Condominiums HOA	
	Plaintiff,	* FOR COURT USE
	vs.	ONLY*
	Hanh Ho Tran and Hoanh Van	
	Tran	Case no. 21CV30547
	Defendants,	Division/Rm 215
	For Plaintiff:	
	Kate Leason	
	For Defendant:	

| Pro se |
| _____ |
| The matter came on for hearing on May 17, 2022 |
| HONORABLE Eric Elliff, Judge of the Denver District |
| Court, and the following FTR proceedings were had. |
| _____ |
| |
| |
| |
| Transcribing solutions, LLC |
| 3758 E. 104 th Ave., Suite 524 |
| Thornton, CO 80233 |
| 720-389-9420 |

14| THE COURT: All right. -- I'm prepared to rule now. |

15| MS. TRAN: Defendant have a -- |

16| THE COURT: -- You're out of time. |

17| MS. TRAN: -- oh. |

18| THE COURT: Thank you. -- Where to begin? |

| -- I, I, -- first of all, -- I do want to acknowledge, |

| Ms. Tran, your -- frustrations here. -- You owned a |

| unit that apparently had a bad heat pump. -- It |

| was never fixed or couldn't be fixed. It prevented |

| you from renting out the -- apartments -- the |

| condominium and -- to your detriment. -- Also, -- |

| the warranty company was of no -- apparently |

| was of no help to you either. |

25| -- And I, I do understand that this causes |

| frustration -- and -- |

| |

| |

1 | perhaps explains in part why the -- homeowners |

| fees were not paid. -- I do understand that. But -- |
| the declarations themselves and the -- Colorado |
| Common -- Colorado -- what is it? The Colorado -- |
5 | MS. LEASON: Colorado Common Interest' |
| Ownership Act. |
6 | THE COURT: -- Common Interest Ownership |
| statute -- thank you -- both provide that setoffs -- |
| are not allowed. So, so even if I were to find -- and |
| I do not find, -- I -- I'm just acknowledging Ms. Tran's |
| theory. Even if I were to find that the homeowners |
| association somehow was delinquent in fixing the |
| heat pump, number one, as I've previously ruled, |
| that's out of this case and, and was an issue that |
| should have been brought back in the county court |
| case. |
14 | But number two, there's no right to set off the |
| homeowner's payments. That -- the, the |
| declarations are quite clear that even in the face |
| of a -- of a breach of covenant by the homeowners |

| association, which again I am not finding, -- there's |
| no right to setoff. So, so, the, the homeowners only |
| solution under these declarations and under most |
| declarations and I have seen is you pay your |
| homeowners association fees, and you sue |
| separately. -- That was not done here. -- The fees |
| were not paid. -- I do find that -- as a result of that, |
| -- the -- well, so that's that. |

23 | Secondly, -- I did allow -- Ms. Tran a fair bit of |
| latitude by actually admitted into evidence -- the |
| documents that she |

25 | filed on -- March 2nd, 2022. -- Those documents |
| essentially |
| |
| |
| | 66 |

1 | rehash -- much of the arguments that Ms. Tran is -- |
| has made before. She does note that -- there was |
| an amendment to the declarations that was -- that |

| were filed, -- that -- the operative declaration. She |
| attaches that to her document. -- I've reviewed it |
| and I'm going to assume for the purpose of this that |
| it was -- an amendment that was filed subsequent, |
| but it doesn't have anything to do with the |
| collections -- that the homeowner -- assessments |
| and delinquencies. It, it, it has to do with, as I read |
| it, turning over control of the homeowners |
| association to the residents from the developer. |
| That's all that does. So, it doesn't have any impact |
| on this case at all. |
17| -- Further, the county court case did find that the -- |
| HOA followed its policies and procedures with |
| respect to collection, but this Court also finds that |
| the HOA also followed its, its policies and procedures |
| with respect to collection -- as evidenced by the |
| declarations, the testimony that I heard in this case, |
| and also the -- foreclosure resolution, which is the last |
| page of exhibit D8. -- If anything, I find that the HOA |

| accorded Ms. Tran quite a lot of latitude her by |
| forbearing on |
25 | foreclosing until -- these homeowners fees -- |
| approached the -- |
| |
| 67 |
1 | sum total of -- I mean, right now we're looking at |
| 18,000, but the total delinquency is somewhere |
| north of 40, I -- 30 at this point. So, --so, -- I, I, I think |
| the HOA was more than generous in, in -- allowing -- |
| the Defendants to, to become current, which has |
| not happened unfortunately. |
6 | So, -- THE COURT does find that -- the Defendants |
| are liable for unpaid assessments, late charges, fines |
| interest, and attorneys fees. -- THE COURT orders |
| that the -- homeowners' lien be foreclosed, that it |
| order -- that an order of foreclosure will issue, and |
| that foreclosure sale and satisfaction of the |
| judgment be held. I'll look for a proposed order from |

| the Plaintiff's for that propose. |

13| The, the lien is adjudged -- under the -- under the |

| statutes to be superior to all other interests. The |

| proceeds of the foreclosure sale shall be applied as |

| set forth in the declarations. -- THE COURT -- finds |

| that -- the total damages here -- include \$18,015.10 |

| in unpaid -- homeowners assessments and fees, |

| \$4,567.02 in interest? Is that correct, counsel? |

19| MS. LEASON: Yes, Your Honor. |

20| THE COURT: -- Six hundred and sixty dollars -- in -- |

| late charges. -- Attorney's fees in the amount of |

| \$28,476 up until today, plus an additional \$975 for |

| for fees for today and costs in the amount of |

| \$2,619.94. Total judgment will enter in favor of |

24| the Plaintiff's and against the Defendants |

| jointly and separately |

25| in the amount of \$55,313.06. |

APPENDIX C

District Court, Denver County, } Date filed: May 19, 2022
Colorado } 3:57PM

} Case no. 21CV30457

Court address: 1437 Bannock St. }

Street, Denver, CO 80202 }

Court Phone: 720.-865-8301 }

Plaintiff: Parkway Condominiums } Case no. 2021CV30547

v. } Div: 215

Defendants: Hoanh Van Tran; }

Hanh Ho Tran: Wells Fargo Bank, }

N.A.; and Paul D Lopez As Public }

Trustee For The City And County }

Of Denver }

**ORDER FOR JUDGMENT AND ORDER AND DECREE
FOR JUDICIAL FORECLOSURE**

THIS COURT, HEREBY GRANTS this Order and Decree
for Judicial Foreclosure and otherwise being fully informed
on the premises, finds as follows:

1. Venue has been considered and is proper pursuant to C.R.C.P. 98(a);
2. All named Defendants were validly served with process in this matter;
3. Defendant the City and County of Denver Public Trustee Filed a Disclaimer in this action on March 11, 2021;
4. Defendant Wells Fargo Bank, N.A. entered into a Stipulation to Lien Priority which was filed with this Court on April 22, 2021 and made an Order of the Court on April 26, 2021, at which time the Defendant was dismissed with prejudice from this action;
5. Defendant Hoanh Van Tran Failed to file an answer or responsive pleading in this matter, and the time for filing in this matter, and the time for filing such responsive pleadings has elapsed;
6. Defendant Hanh Ho Tran filed an Answer to this action on May 28, 2021;
7. Trial was held on May 17, 2022. Following the presentation of witness testimony and exhibits by Plaintiff and Defendant, the Court issued its findings of fact and order for final judgment and sale as follows:
 - (a) Plaintiff's Exhibit 9 accurately represents the total amount owed to the Association;
 - (b) The Court took judicial notice of the holding in Denver, County Case Number 2019C61529 and adopts its findings

that the Plaintiff complied with its Collection Policy and Colorado Common Ownership Interest Act;

(c) This Court also holds that the Plaintiff complied with its Collection Policy and Colorado Common Ownership Interest Act;

(d) The Plaintiff followed its policies and procedures for collection of assessments;

(e) The First Amended to the Declaration for Parkway Condominiums I recorded on December 5, 2002 at Rec. no. 2002231190 in the records of the Denver County Clerk and Recorder does not impact the collection of assessments and, therefore, does not affect the Court's findings;

(f) Defendants, Hoanh Van Tran and Hanh Ho Tran, are jointly and severally liable to Plaintiff for a total of \$55,313.06, to include Plaintiff's reasonable attorney fees, which is composed of the amounts listed below;

i. Principal: \$18,015.10;

ii. Interest: \$4,567.02;

iii. Late Fees: \$660.00;

iv. Attorney fees: \$29,451.00; and

v. Court costs: \$2,619.94

(g) The Plaintiff's lien is superior to all other interest, except as provided below;

(h) The real property at issue, which is more fully described below, may be sold by Plaintiff to satisfy the judgment;

(i) The proceeds from a sale of the property are to be applied as set forth in the Declaration as more fully described below.

IT IS FURTHER ORDERED that:

1. Pursuant to C.R.S. section 38-33.3-316(2)(c) and Article 5, Section 5.17 of the Declaration for Parkway Condominiums I, by virtue of Defendants Hoanh Van Tran have waived any right to homestead exemption and, therefore, the homestead exemption does not apply; and
2. Pursuant to C.R.C.P. 54(b), there is no just reason for delay in entering final judgment against said Defendants.
3. Judgment shall enter in favor of Plaintiff Parkway Condominiums I Homeowners Association, Inc and against Defendants Hoanh Van Tran and Hanh Ho Tran, jointly and severally, in the total amount of \$55,313.06;
4. Pursuant to Article 5, Section 5.11 of the Declaration, post judgment interest at the rate of 21% per annum is award on the total judgment until the date of Sheriff's sale.
5. The Order and Decree of foreclosure shall be subject to the superior priority position of the Deed of Trust held by Wells Fargo Bank, N.A. in the official real properties records of the City and County of Denver, Colorado on December 10, 2015, as instrument number 2015170803, and

shall not impair, extinguish or otherwise affect the Deed of Trust.

6. This Court orders the Denver County Sheriff to sell at Sheriff's sale, subject to the Defendants' right to cure pursuant to C.R.S. section 38-38-104, the real property commonly known and numbered as 601 W. th Avenue, #119, Denver, CO 80204, which is legally described below, in satisfaction of Plaintiff's monetary judgment and statutory lien pursuant to C.R.S. 38-33.3316, together with all subsequently accruing assessments, late fees, attorney fees and costs through the date of Sheriff's sale, to-wit:

Unit 119, Parkway Condominiums I, in accordance with and subject to the Declaration for Parkway Condominiums I recorded on August 16, 2002 at Reception No. 2002143096 and the Condominium Map for Parkway Condominiums I recorded on August 16, 2002 at Reception No 2002143097 in the Office of the Clerk and Recorder of the City and County of Denver, State of Colorado

Together with Garage Unit no. G-123, storage Unit No. SL-7, Parkway Condominium I Amendment No. 1, in accordance with and subject to the Declaration for Parkway Condominiums I recorded on August 16, 2002 at Reception No 2002143096 as shown on the Condominium Map for Parkway condominiums I, Amendment 1 recorded on January 22, 2004 at Reception No. 2004020275, in said records, City and County of Denver, State of Colorado.

7. Upon expiration of all applicable redemption periods, and without redemption therefrom, the interests of

Defendants Hoanh Van Tran and Hanh Ho Tran will be null and void and extinguished thereby. Pursuant to C.R.S. section 38-38-501, title to the subject real property will be free and clear of any interest or claim of said Defendants. Pursuant to C.R.S. section 38-35-114, this Decree shall also be conclusive and binding against any party who may purport to claim an interest in the property which derives from that of any Defendant named herein.

8. The proceeds from the foreclosure sale shall be applied as follows: first to pay all fees, costs, and expenses incurred in connection with the sale; second, to repay advances for taxes, insurance, or other items as allowed by law; third, to pay Plaintiff the sums due it for the judgment award herein, together with subsequently accruing assessments, late fees, fines, interest, and attorney fees and costs; and fourth, to pay any balance remaining into the registry of the Court, said balance to be applied as the Court shall hereafter direct.

9. This Decree shall be a writ of specific execution and no levy need be made. Further, Plaintiff shall not be required to post a security bond or Sheriff's indemnity bond in connection with such sale.

10. The Denver County Sheriff shall execute and deliver a Certificate of Purchase to the highest bidder for cash at said sale, and cause a duplicate of said certificated of Purchase to be Recorded in the real estate records in the office of the Clerk and Recorder of Denver County, Colorado. The Sheriff shall also make a report of said sale to the Court as soon as possible thereafter.

11. Upon expiration of all applicable redemption periods, the Sheriff shall execute and deliver a Sheriff's Deed conveying fee simple title in and to the property to the holder of the Certificate of Purchase, unless the property is sooner redeemed.

12. This Decree constitutes a complete adjudication of the rights of all parties with respect to the subject real property pursuant to C.R.C.P. 105.

DONE AND SIGNED this ____ day of _____, 2002

DATED May 19, 2022

BY THE COURT:

/s/ illegible

J. ERIC ELLIFF

DISTRICT COURT JUDGE

APPENDIX D

Colorado Supreme Court } DATE FILED: March 04,
} 2024

2 East 14th Avenue }

Denver, CO 80203 }

Certiorari to the court of Appeal }

2022CA880

District Court, Denver County, }

2021CV30547 }

Petitioner: Hanh Ho Tran, } Supreme Court Case

v. } No: 2023SC725

Respondent: Parkway }

Condominiums I Homeowners }

Association, Inc. }

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MARCH 4, 2024.

**Additional material
from this filing is
available in the
Clerk's Office.**