

**H**

District Court of Appeal of Florida,  
 Fifth District.

Peter FISHER, Jennie Lee Fisher, Kenneth Marlin  
 Fisher, Phillip Fisher, and  
 Paul Fisher, Appellant,

v.

TANGLEWOOD AT SUNTREE COUNTRY CLUB  
 CONDOMINIUM ASSOCIATION, INC., Appellee.

**No. 92-718.**

June 2, 1995.

Rehearing Denied March 19, 1996.

Condominium association brought foreclosure action against owners of condominium units arising from owners' failure to pay special assessment, and owners counterclaimed for declaratory judgment, slander of title, abuse of process, and breach of fiduciary duty. The Circuit Court, Brevard County, Lawrence V. Johnston, J., found for association. Owners appealed. On rehearing, the District Court of Appeal held that: (1) Court of Appeal would review summary judgment which permitted foreclosure of lien securing assessments, even though other counts of complaint and counterclaim which also related to those assessments were yet to be determined; (2) issues of material fact existed as to validity of assessments, precluding summary judgment on foreclosure claim; and (3) grant of summary judgment to owners on abuse of process claim would be improper, since legality of assessment upon which foreclosure action was based was in dispute.

Reversed and remanded.

West Headnotes

**[1] Appeal and Error**  **80(6)**

30k80(6) Most Cited Cases

Court of Appeal would review summary judgment which permitted foreclosure of lien securing assessments, even though other counts of complaint and counterclaim which also related to those assessments were yet to be determined; although this permitted piecemeal review, it was the only way to correct an erroneous ruling that might not be subject to correction at later date.

**[2] Judgment**  **181(15.1)**

228k181(15.1) Most Cited Cases

In condominium association's action against owners of condominium units for foreclosure of lien securing assessments, issues of material fact existed as to validity of assessments, precluding summary judgment.

**[3] Judgment**  **181(15.1)**

228k181(15.1) Most Cited Cases

In action by owners of condominium units against condominium association for abuse of process arising from association's foreclosure action, grant of summary judgment to owners would be improper, since legality of assessment upon which foreclosure action was based was in dispute.

\***1051** Appeal from the Circuit Court for Brevard County, Lawrence V. Johnston, Judge.

Edward A. Marod and Joseph Ianno, Jr. of Edward A. Marod, P.A., West Palm Beach, for appellant.

Michael M.M. Wallis of Mosley, Wallis & Whitehead, P.A., Melbourne, for appellee.

PER CURIAM.

**ON MOTION FOR REHEARING**

[1] We grant rehearing and withdraw our previous opinion. On further reflection, we agree with appellant that the summary judgment entered in this cause which permitted foreclosure of a lien securing assessments, before other counts of the complaint and counterclaim which also related to these assessments were determined, should be reviewable at this time. Although this permits piecemeal review, it is the only way to correct an erroneous ruling that may not be subject to correction at a later date.

[2][3] The trial court should not have entered summary judgment in this case because the validity of the assessments remained a contested fact which must be determined prior to the enforcement of the lien. Likewise, we reverse the summary judgment in favor of Tanglewood on the abuse of process count because in originally upholding the validity of this summary judgment, we held that the court's enforcement of the lien was a determination that the assessment was legal. We were in error because that issue remains in dispute in another count.

**REVERSED and REMANDED.**

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**(Cite as: 669 So.2d 1050)**

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HARRIS, C.J., and PETERSON and THOMPSON,  
JJ., concur.

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