

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Aquastar Holdings LLC v. Peckar & Abramson P.C.

No. 3D24-0335 (Fla. 3d DCA June 18, 2025) · No. No. 3D24-0335 · Decided June 18, 2025

SUMMARY

The Florida Third District Court of Appeal held that Aquastar’s recorded judgment created a valid judgment lien before Peckar’s mortgage was recorded. Because Aquastar purchased the property at an execution sale based on that senior judgment lien, the purchase extinguished Peckar’s later-recorded mortgage. The court reversed the foreclosure judgment and attorney’s-fee award, directed entry of summary judgment for Aquastar on its quiet-title claim, ordered dismissal of the declaratory-judgment counterclaim, and affirmed summary judgment on the fraudulent-transfer counterclaim.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Lindsey, J.; Gordo, J.; Gooden, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	June 18, 2025
DOCKET	No. 3D24-0335
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Aquastar appealed a final judgment of foreclosure and related summary-judgment and attorney-fee rulings entered in favor of Peckar.
STANDARD OF REVIEW	Summary judgment and entitlement to attorney’s fees and costs are reviewed de novo; the amount of fees and costs is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Aquastar Holdings LLC v. Peckar & Abramson P.C.

TOPICS

- foreclosure
- mortgages
- quiet title
- summary judgment
- attorney fees

PRACTICE AREAS

real estate

mortgages

foreclosure

civil procedure

appellate procedure

attorney fees

commercial litigation

QUESTIONS PRESENTED

1. Whether Aquastar's recorded judgment created a valid and perfected judgment lien despite the omission of the statutory interest rate and the words "for which let execution issue."
2. Whether the nunc pro tunc amendment to Aquastar's judgment related back and preserved the judgment lien's priority over Peckar's later-recorded mortgage.
3. Whether Aquastar acquired the property at the sheriff's execution sale subject to Peckar's mortgage or whether the sale extinguished that mortgage.
4. Whether the language in the sheriff's deed and notice of sale altered the legal effect of the execution sale.
5. Whether Aquastar was entitled to summary judgment on its quiet-title counterclaim and whether its declaratory-judgment counterclaim should be dismissed.
6. Whether Peckar could recover contractual attorney's fees from Aquastar, a nonparty to Peckar's mortgage.

HOLDINGS

1. Recording a certified copy of a money judgment together with the required address affidavit satisfied section 55.10(1), Florida Statutes, and created a valid judgment lien on Avant's real property. The omission of the statutory interest rate and the words "for which let execution issue" did not invalidate or prevent perfection of the lien.
2. Aquastar's judgment lien had priority over Peckar's mortgage because Aquastar's judgment was recorded first. The nunc pro tunc amendment correcting clerical omissions related back to the original judgment date and did not alter the lien's priority.
3. A purchaser at a sheriff's execution sale takes title subject only to encumbrances existing when the judgment underlying the execution was recorded. Because Peckar's mortgage was recorded after Aquastar's judgment lien, Aquastar's purchase extinguished the mortgage and there was no mortgage left for Peckar to foreclose.
4. Boilerplate language in the sheriff's deed and notice of sale did not preserve Peckar's later-recorded mortgage or change the legal interests transferred at the execution sale.
5. Aquastar was entitled to summary judgment on its quiet-title counterclaim because the execution sale extinguished Peckar's mortgage. The declaratory-judgment counterclaim was dismissed because, after resolution of the foreclosure and quiet-title claims, no bona fide, actual, present, and practical need for a declaration remained.
6. Aquastar could not be liable for attorney's fees under Peckar's mortgage because Aquastar was not a party to the mortgage and had not agreed to assume its terms. The fee award was therefore erroneous and was reversed.

KEY QUOTATIONS

“The recordation of Aquastar’s Judgment on January 22, 2021, created a valid judgment lien that continued in existence until Aquastar purchased the Property at the Sheriff’s sale in May 2022.” (6)

“Thus, Peckar’s Mortgage was extinguished when Aquastar purchased the Property at the Sheriff’s sale because the purchaser at an execution sale takes title subject only to encumbrances existing at the time the underlying judgment was recorded.” (6)

“This was error because Aquastar is not a party to Peckar’s Mortgage, and a non-party to a contract who has not agreed to assume the contract is not liable for attorney’s fees pursuant to a term of that contract.” (16)

“Aquastar’s purchase of the Property pursuant to the execution of that Judgment Lien extinguished Peckar’s Mortgage.” (17)

FACTUAL BACKGROUND

Aquastar obtained a \$525,680 money judgment against Avant Design Group, Inc. and recorded a certified copy with the required address affidavit on January 22, 2021. Avant subsequently executed and Peckar recorded a mortgage on Avant's property on January 26, 2021. Aquastar later purchased Avant's interest in the property for \$300 at a May 25, 2022 sheriff's execution sale. Peckar then sought to foreclose its mortgage, but the appellate court concluded that the earlier-recorded judgment lien had priority and the execution sale extinguished Peckar's later mortgage.

PROCEDURAL HISTORY

Aquastar obtained a money judgment against Avant Design Group, recorded the judgment, and purchased Avant's property at a sheriff's execution sale. Peckar later sued Aquastar to foreclose a mortgage that Avant had executed after Aquastar's judgment was recorded. The trial court granted summary judgment to Peckar on the foreclosure claim and Aquastar's counterclaims, awarded Peckar attorney's fees, and Aquastar appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the final judgment in favor of Peckar and remand for entry of summary judgment in favor of Aquastar on Peckar's foreclosure claim and Aquastar's quiet-title counterclaim. Reverse and remand the ruling on Aquastar's declaratory-judgment counterclaim with instructions to dismiss it. Affirm the summary judgment for Peckar on the fraudulent-transfer counterclaim. Reverse the attorney's-fee and cost award to Peckar.

CASES CITED

- Avant Design Group, Inc. v. Aquastar Holdings LLC, 351 So. 3d 62 (Fla. 3d DCA 2022)
- Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)
- State Farm Mut. Auto. Ins. Co. v. Best Med. Treatments, Inc., 354 So. 3d 612, 613 (Fla. 3d DCA 2023)

- Martinez v. Reyes, 405 So. 2d 468, 469 (Fla. 3d DCA 1981)
- In re Whelan, 325 B.R. 462, 463 (Bankr. M.D. Fla. 2005)
- B.A. Lott, Inc. v. Padgett, 114 So. 2d 667, 668-69 (Fla. 1953)
- Lamchick, Glucksman & Johnston, P.A. v. City Nat. Bank of Fla., 659 So. 2d 1118, 1120 (Fla. 3d DCA 1995)
- Sharpe v. Calabrese, 528 So. 2d 947, 949-50 (Fla. 5th DCA 1988)
- DuBreuil v. Regnvall, 527 So. 2d 249, 249 (Fla. 3d DCA 1988)
- Boggs v. Wainwright, 223 So. 2d 316, 317 (Fla. 1969)
- R.R. Ricous & Sons Co. v. Merwin, 113 So. 745, 746 (Fla. 1927)
- Maxfly Aviation Inc. v. Cap. Airlines Ltd., 843 So. 2d 973, 975 (Fla. 4th DCA 2003)
- Mansfield v. Johnson, 40 So. 196, 200 (Fla. 1906)
- Young Land USA, Inc. v. Credo LLC, 278 So. 3d 776, 778 (Fla. 3d DCA 2019)
- Klein v. Advance Mortg. Corp., 450 So. 2d 601, 601 (Fla. 4th DCA 1984)
- Sperling v. United States, 994 So. 2d 1139, 1140 (Fla. 3d DCA 2008)
- McAlice v. Andersen, 403 So. 2d 563, 564-65 (Fla. 3d DCA 1981)
- Camp v. Moseley, 2 Fla. 171 (1848)
- Slachter v. Abundio Inv. Co., 566 So. 2d 348, 349 (Fla. 3d DCA 1990)
- State, Dep't of Envtl. Prot. v. Garcia, 99 So. 3d 539, 544-47 (Fla. 3d DCA 2012)
- McIntosh v. Harbour Club Villas Condo. Ass'n, 468 So. 2d 1075, 1081 (Fla. 3d DCA 1985)
- Wells Fargo Bank Nat'l Ass'n for Morgan Stanley ABS Cap., MSAC 2007-HE3 v. Bird, 234 So. 3d 833, 834-35 n.1 (Fla. 5th DCA 2018)
- Fielder v. Weinstein Design Grp., Inc., 842 So. 2d 879, 880 (Fla. 4th DCA 2003)

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