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## DICKLER, KAHN, SLOWIKOWSKI & ZAVELL, LTD. SUCCESSFUL BEFORE THE 2ND DISTRICT COURT OF APPEALS

### Collections - Personal Judgment

In *The Board of Managers of the Inverrary Condo. Association v. Karaganis*, briefed by DKS&Z attorney Jordan Gilman, the Second District Appellate Court has ruled, first, that a condominium association may enforce a money judgment obtained in a collection action under the Forcible Entry and Detainer Act ("Forcible Act") by "any lawful means available to judgment creditors generally." In so holding, the Court made clear that associations may enforce a money judgment obtained under the Forcible Act by collecting from unit owners personally.

As a practical matter, in many cases, taking possession of a delinquent unit is the fastest and easiest way of collecting delinquent assessments. Delinquent unit owners are often eager to pay to avoid an imminent eviction or to regain possession of their unit after an eviction has taken place. Of course, the association also has the right, but not the obligation, to rent the unit to a third party and apply the rent toward the judgment balance and other amounts due. In some cases, however, an association may need to look to other assets of the unit owner to satisfy its judgment.

The Second District Opinion makes clear that an association, in addition to its possession remedy, can also attempt to recover from a unit owner's other personal assets. For example, through special proceedings, an association may recover on its judgment by garnishing a unit owner's wages, conducting a citation to discover the unit owner's other assets and asking for a court order to turn over any discovered assets to the association. The Second District's Opinion makes clear that these collection procedures are available to associations after they obtain a judgment in a forcible proceeding. Such procedures can become important for associations, for example, when a unit is in foreclosure or renting the unit is impracticable. In those situations, enforcing the judgment against a unit owner's personal assets may be the only way an association can collect.

Second, the Court ruled that an association has a statutory right to a personal money judgment, holding that the right to a personal money judgment arises from the Forcible Act itself, "[i]rrespective of any liens created pursuant to the Condominium Act and irrespective of any rights under the condominium declaration." This clarifies that the Forcible Act itself provides the right to a personal judgment money. This is potentially useful to an association and its counsel when, for example, the remedies provisions of an association's governing documents do not clearly provide for a personal judgment or the authority to obtain a personal judgment is otherwise being challenged by a unit owner or his counsel. It also eliminates the need to rely on more cryptic language in the Illinois Condominium Property Act as authority for pursuing a personal judgment. The Second District's holding makes clear that the language of the Forcible Act itself gives rise to such a money judgment.

Finally, the Second District held that a unit owner's claim that his association failed to repair or maintain the common elements is not a viable or "germane" defense against an association's claim for reasonable attorney's fees incurred in connection with a collection action. This reinforces and expands the scope of the Illinois Supreme Court's holding in *Spanish Court Condominium Association v. Lisa Carlson*, which held that an association's failure to repair or maintain the common elements is not a viable defense to a claim to an action for possession based on the nonpayment of assessments. The Second District's holding prevents unit owners from circumventing *Spanish Court* and other existing law designed to streamline forcible actions by preventing them from raising an association's failure to repair and maintain the common elements as a defense to an association's claim for attorneys fees.

DKS&Z is pleased with the Second District's very favorable ruling and the precedent it sets. Mr. Gilman believes the Second District's Opinion clarifies that associations have a statutory right to a personal judgment in actions brought under the Forcible Act and reinforces existing law designed to prevent unit owners from impeding collection actions by injecting their personal grievances into those proceedings.



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