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### Court rules clerical errors can be fixed

**Commentary by Jed Frankel.** A recent case illustrates Florida courts' continuing efforts to see that justice is done, even where technical problems arise.

After Curtis Haswell failed to pay assessments, his homeowners association ultimately sought a foreclosure action against him. But the association's attorney referred to it as "Lake Charleston Homeowners Association, Inc." instead of "Lake Charleston Maintenance Association, Inc."

Haswell claimed the attorney committed fraud and misconduct.

The 4th District Court of Appeal said there was no intent to defraud by the counsel but "simply an error."

**SEE COMMENTARY, PAGE A4**

## Board of Contributors: Paperwork mistakes can cost clients time, money

Jed Frankel

One would hope his lawyer would know his name — or in the case of a community association — the correct corporate name. But the recent case of Lake Charleston Homeowners Association, Inc. v. Haswell showed that is not always the case.

But the good news is that Florida courts will allow such "clerical mistakes" to be corrected when the interests of justice require.

After Curtis Haswell failed to pay assessments to his homeowners association, it filed a claim of lien and ultimately a foreclosure action against him. The association's attorney obtained a final judgment against Mr. Haswell based upon an affidavit which identified the association as the "Lake Charleston Homeowners Association, Inc." The association, in fact, is the "Lake Charleston Maintenance Association, Inc."

Mr. Haswell sought relief from the final judgment claiming the association's attorney committed fraud and misconduct because he should have been aware he named the wrong entity. According to Haswell's motion this was not the first time the association's attorney named the wrong entity. In response, the association's counsel took the

position that the incorrect name resulted from a clerical error and asked the court to correct it for purposes of the lawsuit.

After an evidentiary hearing, the court determined that there was no intent to defraud by the association's counsel but "simply an error." Nonetheless, the court granted Haswell's motion for relief from the final judgment because the affidavit upon which it was based was wrong. The association appealed.

### Findings Misapplied

The 4th District Court of Appeal reversed the lower court finding that it misapplied its findings of fact to the law regarding the standard for relief from judgments. The clerical error as determined by the trial court could not form the basis for relief. There was no fraud, misrepresentation or other misconduct, but a simple clerical

mistake by the association's attorney. The 4th DCA remanded the case to the trial court with instructions to reinstate the final judgment and correct it with the association's proper name.

This case illustrates Florida courts' continuing efforts to see that justice is done, even where "technical" problems arise. Our courts seek to oversee a search for truth, not gladiatorial contests or victory by surprise.

### **Court of 'Equity'**

This is especially so where a court sits as a court of "equity," such as in foreclosure cases. In this case, the homeowner did not claim that he paid what he owed or even that the assessments sought to be collected were improper, but wanted to be excused from a responsibility he willingly assumed when he purchased a home in the community. The Florida Supreme Court has recognized "that foreclosure is an equitable remedy" and that the "ends of justice" are to be considered. Accordingly, when strict enforcement of the rules of practice tends to prevent or jeopardize the administration of justice, the rules yield to that higher purpose.

But Florida courts will not give a party relief where its conduct results in more than a "mere misnomer," especially if that results in prejudice to another party. In *G.B. Holdings, Inc. v. Steinhäuser*, the 4th DCA reversed a trial court's order allowing a plaintiff to amend its complaint and final judgment to name her former employer. The plaintiff's lawyer sued a separate and unrelated corporate entity as the defendant in the original complaint and failed to name the employer even though he was told of the mistake. The plaintiff obtained a default against the unrelated corporate entity and a judgment after a jury trial. The plaintiff then convinced the trial court to include the employer in the final judgment and sought to execute on the judgment!

The District Court reversed because the due process rights of the former employer were violated. It had not been properly named as a defendant in the lawsuit nor given an opportunity to defend itself. Strategic litigation decisions by a party's attorney — like adding the employer only after judgment was entered — are not a correctable "mistake."

### **Diligence of Counsel**

Even though our courts are willing to allow for the correction of "mistakes," significant time and expense can be avoided through the diligence of counsel — and the client. That was especially true in this case where the claim of lien which started the foreclosure process and which was attached to the complaint contained the association's correct name. Of course it is always a good idea for a party involved in litigation to review documents filed in the case. Catching a mistake early on makes it much easier to correct.

Jed Frankel is a partner at the Hollywood law firm of Eisinger Brown Lewis Frankel & Chaiet. He is head of the firm's litigation practice group. Jed Frankel, a partner at Hollywood firm Eisinger Brown Lewis Frankel & Chaiet, says legal documents should always be closely reviewed by the parties involved to avoid "clerical" errors.