

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE, Under
the Pooling and Servicing Agreement Relating to IMPAC SECURED
ASSETS CORP. MORTGAGE PASS-THROUGH CERTIFICATES, SERIES
2006-5,
Appellant,

v.

CORAL KEY CONDOMINIUM ASSOCIATION (at Carolina), INC., and
DARIO LUNA,
Appellees.

No. 4D09-3392

[April 14, 2010]

STEVENSON J.

On May 12, 2008, Deutsche Bank National Trust Company filed a mortgage foreclosure complaint, naming the unit owner, Dario Luna, as well as the Coral Key Condominium Association (at Carolina), Inc., as defendants. After seven months of no record activity, the Association filed a motion to compel Deutsche to proceed with the foreclosure sale or pay monthly assessments due to the Association. The trial court granted the motion, explaining that it was fair and equitable for the mortgage holder to pay monthly assessments due to the Association if there is an extended period of delay in the foreclosure proceeding for no good reason. We reverse.

After the trial court entered the order appealed, the Third District issued *U.S. Bank National Ass'n v. Tadmire*, 23 So. 3d 822 (Fla. 3d DCA 2009), which addressed this precise issue. In *Tadmire*, the court rejected the notion that equity and fairness support an order requiring a bank to pay condominium assessments while foreclosure proceedings are pending since section 718.116(1)(b), Florida Statutes (2009), makes it clear that the first mortgagee is required to pay assessments only after acquiring title, and equity follows the law. *Id.* at 823-24. We agree with *Tadmire* and reverse.

Reversed and remanded.

GROSS, C.J., and POLEN, J., concur.

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Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ronald J. Rothschild, Judge; L.T. Case No. 08-21500 CACE 08.

Jack R. Reiter and Jordan S. Kosches of Adorno & Yoss LLP, Miami, for appellant.

Steven A. Fein and Shelley J. Murray of Fein & Meloni, Esqs., Plantation, for appellee Coral Key Condominium Association (at Carolina), Inc.

Not final until disposition of timely filed motion for rehearing.