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Appeals Court Ruling Renders Condominium Super-Lien Not So Super

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[Joshua Lee Smith](#) – Massachusetts General Laws Chapter 183A, Section 6(c) (“Section 6”) affords a condominium association a lien for common expenses as they become due that is deemed prior to most liens. Even as to a prior-recorded first mortgage, common expenses for six months prior to the commencement of an action and reasonable attorneys’ fees and costs have “super”-priority status over such first mortgage. Many condominium associations have become accustomed to rolling this super-lien forward by filing successive actions to cover multiple six-month periods. However, the Massachusetts Appeals Court recently held in [Drummer Boy Homes Association, Inc. v. Britton](#) that a condominium association may not extend its six-month lien priority over a first mortgagee by filing successive suits to enforce its lien.

In [Drummer Boy](#), the association (the “Association”) filed an action in the trial court to recover unpaid common expenses from the owners of a unit. As the defendants continued to withhold the monthly fees, the Association filed two more actions in succession, and the three actions were consolidated. The trial court judge ruled that the Association’s lien for the defendants’ common expense assessments had priority over the first mortgage, but only to the extent of the six-month period preceding commencement of the first of the consolidated actions.

The Appeals Court agreed with the lower court, and reasoned that if Section 6 was intended to allow an association to file successive lawsuits in order to secure multiple six-month priority liens, the statutory language limiting the portion of an association’s lien to six months’ worth of assessments, would seem a “cumbersome and, ultimately, superfluous mechanism if successive lawsuits could be utilized to secure the entirety of the unit owner’s delinquency.” Finding no case precedent in Massachusetts, the Court cited [Hudson House Condominium Assn., Inc. v. Brooks](#), 223 Conn. 610 (1992), where the Supreme Court of Connecticut rejected a similar argument made by a condominium association under Connecticut’s priority lien statute, which contains a similar priority lien provision for condominium associations. In describing the history of Section 6, the Court also noted that the six-month priority lien was crafted to address common expense delinquencies at a time when lender foreclosures typically took only six months to complete.

This is a significant blow to condominium associations across the Commonwealth, many of which find themselves faced with an influx of long-delayed unit mortgage foreclosures and ever-rising operating costs. Perhaps this decision will be further appealed, but in the meantime, I would expect to see increased efforts by condominium stakeholders to push for an amendment to Section 6 to expand the priority status for common expense assessments beyond the current single six-month period. However, lenders will undoubtedly push back, and as noted in the case, legislative efforts may be thwarted where federally insured mortgages typically require that a first mortgage be subject to a priority lien of no greater than six months for assessments.