

**Summary of SC92805, Board of Managers of Parkway Towers Condominium Association, Inc. v. Trish Carcopa, et al., Homeward Residential Inc., Successor by Merger to American Home Mortgage Servicing, Inc., United States of America**

Appeal from the Jackson County circuit court, Judge Robert M. Schieber  
Argued and submitted May 23, 2013; opinion issued July 16, 2013

**Attorneys:** The mortgage company was represented by Charles S. Pullium III and Scott D. Mosier of Millsap & Singer LLC in Chesterfield, (636) 537-0110, and the condominium association was represented by Alan B. Gallas and Dewanna L. Newman of Gallas and Schulz in Kansas City, (816) 822-8100.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A mortgage company challenges the trial court's judgment finding its lien on a condominium is inferior to the condominium association's assessment lien on the condominium. The company also challenges the constitutional validity of the statute governing the priority of certain liens. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the judgment. The statute is not unconstitutionally vague, and the mortgage company does not meet any of the statutory exceptions for its lien to take priority.

**Facts:** Trish Carcopa bought a Parkway Towers condominium that she ultimately conveyed to herself and Nicole Carcopa. To refinance the original mortgage, Nicole executed an adjustable-rate mortgage note, which Homeward Residential Inc. currently holds. The Parkway Towers condominium association approved an assessment for repairs to the building. After the Carcopas failed to pay their assessment and dues, the condominium association filed suit to foreclose on its assessment lien. The trial court granted Parkway partial summary judgment, finding its assessment lien was superior to Homeward's deed of trust. Homeward moved for reconsideration, alleging the statute governing lien priority was unconstitutional. The trial court overruled the motion. Following a trial, the court entered judgment in Parkway's favor, again finding its assessment lien was superior to the mortgage company's lien. Homeward appeals.

**AFFIRMED.**

**Court en banc holds:** Condominium associations are granted super-priority status for assessment liens because assessments against individual unit owners ensure the common elements are maintained and the value of the entire condominium is not diminished. The association's lien has priority over all other liens except in four statutory circumstances. Because Homeward does not meet any of the statutory exceptions, its lien does not receive priority. Further, it fails to demonstrate that the statute clearly and undoubtedly is unconstitutionally vague and ambiguous.