IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

LATHERESA WILLIAMS, ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED,

Appellant,

v. Case No. 5D18-3913

SALT SPRINGS RESORT ASSOCIATION, INC., AND BOSSHARDT PROPERTY MANAGEMENT, LLC,

Appellees.

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Opinion filed June 12, 2020

Appeal from the Circuit Court
for Marion County,
Lisa D. Herndon, Judge.

Aaron M. Swift and Jordan T. Isringhaus, of Swift, Isringhaus & Dubbeld, P.A., St. Petersburg, for Appellant.

Derek J. Angell, of Bell & Roper, P.A., Orlando, for Appellees.

**EN BANC**

TRAVER, J.

Latheresa Williams, individually and on behalf of similarly situated residents of the Salt Springs Resort condominium complex, appeals the dismissal with prejudice of her

second amended class action complaint. Recognizing the binding authority of *Bryan v. Clayton*, 698 So. 2d 1236 (Fla. 5th DCA 1997), the trial court granted a motion to dismiss filed by Salt Springs Resort Condominium Association, Inc. ("Association") and its property management company, Bosshardt Property Management, LLC ("Property Manager") (collectively "Appellees"). We consider this matter en banc so that we may recede from *Bryan*, which held that association assessments are not "debts" under the Florida Consumer Collection Practices Act ("FCCPA"). *See In re Rule 9.331, Determination of Causes by a Dist. Ct. App. En Banc, Fla. Rules of Appellate Procedure*, 416 So. 2d 1127, 1128 (Fla. 1982) ("[A] three-judge panel of a district court should not overrule or recede from a prior panel's ruling on an identical point of the law."); *see also O'Brien v. State*, 478 So. 2d 497, 499 (Fla. 5th DCA 1985).

## I. Background

Williams owns a condominium in Salt Springs Resort, where she is a resident and an Association member. Salt Springs Resort's bylaws require residents to pay assessments, which are incurred primarily for personal, family, or household purposes. Appellees claim Williams is delinquent in payment. Accordingly, they publicly posted a list of over one hundred names of condominium owners who allegedly owed the Association money. They also listed the amounts owed. Williams, whose name appeared on the list, filed a one-count class action complaint contending the FCCPA prohibits the public posting of "deadbeat lists" to enforce or collect a "consumer debt." *See* § 559.72(14), Fla. Stat. (2018).

Because Williams alleged her unpaid assessments were "consumer debt," the trial court correctly recognized *Bryan* mandated the complaint's dismissal. *See Pardo v.*

*State*, 596 So. 2d 665, 667 (Fla. 1992) (quoting *State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976) ("[I]f the district court in which the trial court is located has decided the issue, the trial court is bound to follow it.")).

## II. Standard of Review

We review de novo a trial court's dismissal for failure to state a cause of action because it is an issue of law. *Siegle v. Progressive Consumers Ins.*, 819 So. 2d 732, 734 (Fla. 2002). In determining the merits of a motion to dismiss, trial courts must limit their consideration to the complaint's four corners, accept all allegations as true, and draw all inferences in favor of the pleader. *Fox v. Prof'l Wrecker Operators of Fla., Inc.*, 801 So. 2d 175, 178 (Fla. 5th DCA 2001). On appeal, we apply these same principles. *Id.*

## III. Analysis

In explaining our decision to recede from *Bryan*, we first analyze the operative provisions of the FCCPA. Then, we discuss our rationale in *Bryan* and the later decisions addressing the FCCPA that were unavailable when we decided it. Finally, we apply the FCCPA's plain language and recent case law to Williams's allegations.

### *A. The FCCPA*

We begin our analysis with the FCCPA. We construe a statute "to ascertain and give effect to the intention of the Legislature as expressed in the statute." *Gaulden v. State*, 195 So. 3d 1123, 1125 (Fla. 2016) (quoting *City of Tampa v. Thatcher Glass Corp.*, 445 So. 2d 578, 579 (Fla. 1984)). We first examine the statute's plain language, and if it is clear and unambiguous, we must apply the statute as written. *Id.*; *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64–65 (Fla. 2005). "[T]o do otherwise would constitute an

abrogation of legislative power." *Daniels*, 898 So. 2d at 65 (quoting *Nicoll v. Baker*, 668 So. 2d 989, 990–91 (Fla. 1996)).

The FCCPA is designed to protect consumers. § 559.72, Fla. Stat.; *Laughlin v. Household Bank, Ltd.*, 969 So. 2d 509, 512–13 (Fla. 1st DCA 2007). And although not binding, we give federal court decisions great weight when construing the FCCPA. § 559.77(5), Fla. Stat. ("In applying and construing this section, due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act."); *Kelly v. Duggan*, 282 So. 3d 969, 972–73 (Fla. 1st DCA 2019) (citing *Dish Network Serv., L.L.C. v. Myers,* 87 So. 3d 72, 77 (Fla. 2d DCA 2012)).

The FCCPA states that "no person" shall publish or post a deadbeat list to enforce or attempt to enforce the collection of a "consumer debt." § 559.72(14), Fla. Stat. It defines both "debt" and "consumer debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment." *Id.*; § 559.55(6). A "consumer" is "any natural person obligated or allegedly obligated to pay any debt." *Id.*; § 559.55(8).

*B. Bryan*

*Bryan* addressed whether assessments owed to homeowners and condominium associations qualified as "debt" under the FCCPA and its federal counterpart, the Fair

Debt Collection Practices Act ("FDCPA").[1] 698 So. 2d at 1237. In holding that assessments did not qualify as "debt," we adopted the view of federal district courts at the time. These federal district court decisions on which we initially relied all based their holding on a Third Circuit Court of Appeals decision. *Zimmerman v. HBO Affiliate Grp.*, 834 F.2d 1163 (3d Cir. 1987). In dicta, *Zimmerman* opined that a transaction "involving the offer or extension of credit to a consumer" was necessary to give rise to an enforceable "debt" under the FDCPA. *Id.* at 1168.

After we decided *Bryan*, the Seventh Circuit rejected *Zimmerman*'s "extension of credit" requirement and concluded assessments qualified as "debt" under the FDCPA's plain language. *See Newman v. Boehm, Perlstein & Bright, Ltd.*, 119 F.3d 477, 482 (7th Cir. 1997). We declined to recall our mandate after *Newman*, but clarified that the purchase of a condominium unit does not qualify as a consumer transaction. *Bryan*, 698 So. 2d at 1237–38. We also questioned *Newman*'s holding that whether assessments qualified as consumer debt "turns on whether the unit was originally purchased for 'personal, family, or household purposes.'" *Id.*

*C. Later Cases*

In *Newman*, the Seventh Circuit recognized "a transaction creating an obligation to pay" was all that was necessary to create a "debt" under the FDCPA, consistent with the unambiguous statutory language. *See* 119 F.3d at 480 (citing *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1325 (7th Cir. 1997)); *see also*

[1] Because Williams did not file a claim under the FDCPA, our decision does not extend to the construction of that Act. *See Read v. MFP, Inc.*, 85 So. 3d 1151, 1153 (Fla. 2d DCA 2012) ("[T]he FDCPA and the FCCPA are not identical, and a violation of one act does not automatically constitute a violation of the other.").

*Brown v. Budget Rent-A-Car Sys., Inc.*, 119 F.3d 922, 924 (11th Cir. 1997). It found that condominium purchasers became obligated to pay their assessments when they purchased their unit pursuant to state law and their condominium bylaws. *Newman,* 119 F.3d at 481. Therefore, it concluded the owner's obligation to pay "arose" in connection with the purchase, "even if the timing and amount of particular assessments had yet to be determined." *Id.*

Since *Newman*'s issuance, federal courts have unanimously adopted the view that association assessments can be "debt."[2] Our considered decision to recede from *Bryan* is informed by over twenty years of other courts' detailed analysis of the FCCPA and the FDCPA's plain language. For example, the Sixth and Tenth Circuits followed *Newman*'s reasoning in concluding a condominium owner's payment obligations arise in connection with the condominium purchase transaction, pursuant to condominium bylaws and state law, and are therefore "debt" under the FDCPA. *Haddad v. Alexander, Zelmanski,*

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[2] *See, e.g.*, *Agrelo v. Affinity Mgmt. Servs., Inc.*, 841 F.3d 944, 952 (11th Cir. 2016); *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 698 F.3d 290, 294 (6th Cir. 2012); *Ladick v. Van Gemert*, 146 F.3d 1205, 1206 (10th Cir. 1998); *Williams v. Edelmen*, 408 F. Supp. 2d 1261, 1267–68 (S.D. Fla. 2005); *Dikun v. Streich*, 369 F. Supp. 2d 781, 785 (E.D. Va. 2005); *Tyrell v. Robert Kaye & Assoc., P.A.*, 223 F.R.D. 686, 688 (S.D. Fla. 2004); *Fuller v. Becker and Poliakoff, P.A.*, 192 F. Supp. 2d 1361, 1367 (M.D. Fla. 2002); *Caron v. Charles E. Maxwell, P.C.*, 48 F. Supp. 2d 932, 935 (D. Ariz. 1999); *Taylor v. Mount Oak Manor Homeowners Ass'n,* 11 F. Supp. 2d 753, 754–55 (D. Md. 1998).

Conversely, the early district court decisions available when we first decided *Bryan* have now been disapproved or abrograted. *Riter v. Moss & Bloomberg, Ltd.*, 932 F. Supp. 210 (N.D. Ill. 1996), *rev'd sub nom. Newman*, 119 F.3d at 481; *Azar v. Hayter*, 874 F. Supp. 1314, 1318 (N.D. Fla. 1995), *abrogated by Agrelo*, 841 F.3d at 950–51; *Vosatka v. Wolin-Levin, Inc.*, No. 94 C 4129, 1995 WL 443950 (N.D. Ill. July 21, 1995), *abrogated by Newman*, 119 F.3d at 481; *Nance v. Petty, Livingston, Dawson, & Devening*, 881 F. Supp. 223 (W.D. Va. 1994), *disapproved by Goshen Run Homeowners Ass'n v. Cisneros*, 223 A.3d 917, 930 (Md. 2020); *Archer v. Beasley*, Civ. No. 90-2576(CSF), 1991 WL 34889 (D.N.J. Mar. 5, 1991), *called into doubt by Loigman v. Kings Landing Condo. Ass'n*, 734 A.2d 367, 371 (N.J. Super. Ct. Ch. Div. 1999).

*Danner & Fioritto, PLLC*, 698 F.3d 290, 294 (6th Cir. 2012); *Ladick v. Van Gemert*, 146 F.3d 1205, 1207 (10th Cir. 1998). The Eleventh Circuit held that homeowners' assessments are "debt" under the FCCPA because they arise from a consensual, contractual home-purchase transaction. *Agrelo v. Affinity Mgmt. Servs., Inc.*, 841 F.3d 944, 952 (11th Cir. 2016). The *Agrelo* court reasoned that when home buyers incur a contractual obligation to pay assessments pursuant to an association's governing documents in order to purchase their homes, they incur "debts" under the FCCPA. *Id.* at 951–52.

Last year, the First District performed the first Florida appellate court analysis of this issue since *Bryan*. *Kelly*, 282 So. 3d at 970–74. *Kelly* involved a dispute between a condominium owner and his association. *Id.* at 971. Kelly accused the association of, among other things, "making public derogatory statements about him" and suspending his common area privileges. *Id.* In disagreeing with our holding in *Bryan*, the *Kelly* court noted that case law issued since *Bryan* has found that a home purchase can be a consumer transaction under the FCCPA. *Id.* at 972 (first citing *Bank of Am., N.A. v. Siefker*, 201 So. 3d 811, 815 (Fla. 4th DCA 2016); then citing *Brindise v. U.S. Bank Nat'l Ass'n*, 183 So. 3d 1215, 1219 (Fla. 2d DCA 2016); and then citing *Cole v. Echevarria, McCalla, Raymer, Barrett & Frappier*, 965 So. 2d 1228, 1231 (Fla. 1st DCA 2007)). It also observed that since *Bryan*, federal courts had unanimously decided assessments were FCCPA "debt." *Id.* at 973 (citations omitted). Finally, it independently analyzed the FCCPA's plain language and concluded that assessments were "debt" because: (1) under Florida law, a condominium purchase generally is a residential property transaction; (2) under Florida law, the purchase transaction subjects condominium owners to a

declaration, which must include an obligation to pay assessments; and (3) the owner's obligation to pay assessments arises from a contract, in the form of the condominium's governing documents. *Id.* at 973–74 (citing §§ 718.104(g), 718.115(2), 718.116(1)(a), 718.1256, Fla. Stat. (2017)).

*D. This Case*

We agree with our sister court that for the FCCPA to apply to Williams's complaint, her payment obligation or "debt" must "arise (1) from a consumer out of a (2) money, property, insurance, or services transaction which is (3) primarily for personal, family, or household purposes." *Id.* at 973 (citing *Agrelo*, 841 F.3d at 950). *Kelly* did not specifically consider the meanings of "arising out of" or "transaction." But in this context, "arising" is defined as "to originate; to result or proceed." *Arising*, The American Heritage Dictionary (3d ed. 1994). "Transaction" is defined as "something transacted." *Transaction*, The American Heritage Dictionary (3d ed. 1994). "Transact" is defined as "to carry out or conduct (business or affairs)." *Transact*, The American Heritage Dictionary (3d ed. 1994). The purchase of a condominium is unquestionably a property transaction, and Williams alleged her condominium purchase was of residential property for personal, family, or household reasons. *See Brown*, 119 F.3d at 924.

To determine whether her obligation to pay assessments "arose out of" this transaction, we are guided by the Condominium Act, which provides the only mechanism by which a condominium may be created or operated in Florida. *See* §§ 718.101–.71, Fla. Stat. (2018); *Cohn v. Grand Condo. Ass'n*, 62 So. 3d 1120, 1121 (Fla. 2011). Every Florida condominium purchase subjects its purchaser to the condominium's declaration and bylaws. § 718.104(3), (4)(*l*), Fla. Stat. The declaration must include an obligation to

pay association assessments, which apportion liability for condominium common areas. *Id.*; §§ 718.104(4)(g), .115(2). A declaration operates as a contract among unit owners and the association, outlining their respective rights and responsibilities. *Woodside Vill. Condo. Ass'n v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002) (quoting *Pepe v. Whispering Sands Condo. Ass'n*, 351 So. 2d 755, 757–58 (Fla. 2d DCA 1977)); *see also Agrelo*, 841 F.3d at 951 ("When a home buyer must contractually agree to pay homeowners' assessments in order to purchase a home, that home buyer takes on 'debts' for those assessments under the FCCPA.").

Condominium associations may collect assessments, and bylaws must outline the manner of collection. §§ 718.111, .112(2)(g), Fla. Stat. Regardless of how condominium owners acquire title, they are responsible for all assessments that become due while they own their unit. *Id.* § 718.116(1)(a). This obligation originates when they acquire the property, and it can extend to assessments owed on the unit even before they purchased it. *Id.*

Here, Williams has alleged that the Association's bylaws require her to pay annual assessments, and Appellees have alleged she is delinquent in her payment obligations. Florida law therefore dictates Williams's obligation to pay her assessments arose from the purchase of her unit. *See Id.*; *Kelly*, 282 So. 3d at 973–74.

## IV. Conclusion

For these reasons, we recede from *Bryan* and conclude that Williams has sufficiently alleged that her condominium assessment arises out of a consumer transaction to purchase property, and that her ongoing obligation to pay assessments is

a "consumer debt" under the FCCPA.[3] Like our sister court, our conclusion is based on the FCCPA's plain language. *See Kelly*, 282 So. 3d at 973. We also draw support from decisions that a home purchase is a consumer transaction under the FCCPA, and a mortgage foreclosure proceeding is an attempt to collect a debt. *See, e.g.*, *Siefker*, 201 So. 3d at 815. Finally, we rely on numerous federal cases decided since *Bryan* that support our conclusion. *See, e.g.*, *Agrelo*, 841 F.3d at 944; *Ladick*, 146 F.3d at 1205.

Accordingly, we recede from *Bryan*, reverse the dismissal of Williams's second amended class action complaint, and remand for further proceedings.

REVERSED and REMANDED.

EVANDER, C.J., ORFINGER, COHEN, WALLIS, LAMBERT, EDWARDS, EISNAUGLE, HARRIS, GROSSHANS AND SASSO, JJ., concur.

[3] In confining our analysis to this case, we decline to find that all assessments are automatically consumer debts. The unit owner or homeowner, for example, may not meet the statutory definition of a consumer. *See* § 559.55(8), Fla. Stat. Separately, the unit owner or homeowner may not use the property "primarily for personal, family, or household purposes." *Id.* § 559.55(6).