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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

WALLING ENTERPRISES, INC.,)
)
 Petitioner,)
)
 vs.)
)
 WILLIAM J. MATHIAS, ROBERT)
 L. CHANDLER and DAVID W.)
 OHNSTAD,)
)
 Respondents.)
 _____)

CASE NO. 81,126

On Questions of Great Public Importance Certified by
the District Court of Appeal of Florida, Fifth District

REPLY BRIEF OF PETITIONER WALLING ENTERPRISES, INC.

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REPLY ARGUMENT

I.

A STATUTORY LANDLORD'S LIEN PURSUANT TO
SECTION 83.08(2) POTENTIALLY REACHES AND
ENCOMPASSES A TENANT'S LIQUOR LICENSE.

The well-reasoned analysis by the majority below is consistent with the recognized treatment of alcohol beverage licenses.

While they might be categorized as general intangibles, alcoholic beverage licenses have received unique statutory treatment. An alcoholic beverage license is issued for use at a designated location. Unlike other licenses, each has an inherent value and is transferable, so long as the transfer complies with applicable laws and regulations. It has no transitory quality absent prior approval. Since it is limited to a specific location, it is consistent with the type of property to which a landlord's lien can attach.

Accordingly, the first question should be answered in the affirmative.

II.

IN ORDER TO "PERFECT" A STATUTORY
LANDLORD'S LIEN IN A LIQUOR LICENSE,
A LANDLORD IS NOT REQUIRED TO FILE
WITH THE DIVISION PURSUANT TO SECTION
561.64(4); AND TO HAVE PRIORITY OVER
A COMPETING CREDITOR WHO HAS FILED,
THE LANDLORD IS NOT REQUIRED TO HAVE
FILED FIRST.

As recognized by the district court, "[t]he purpose of recording is to place subsequent lienors and holders of security interests on

notice of the prior lien or security interest." Mathias v. Walling Enterprises, Inc., 609 So. 2d 1323, 1326 (Fla. 5th DCA 1992). Here, the application for transfer filed with the division gave notice of the landlord's lien.

Appellee's assertion that landlord's liens are subject to Section 561.65 is flawed. That section, entitled "Mortgagee's interest in license", has been historically limited to mortgages, liens, and security interests securing debt. See Chapter 81-158, § 21, Laws of Florida.

Appellee's assertion that the Uniform Commercial Code is inapplicable to alcoholic beverage licenses is likewise flawed. While Section 561.65(4) provides for filing with the division, it does not remove alcoholic beverage licenses from the Uniform Commercial Code. Section 679.102 provides:

(1) Except as otherwise provided in s. 679.104 on excluded transactions, this chapter applies:

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts; and also

(b) To any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in s. 679.310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

Neither Section 679.104 nor Section 679.310 applies to alcoholic beverage licenses.

Moreover, Section 671.304, formerly Section 680.104, does not exclude Chapter 561 from the Uniform Commercial Code. By not including Chapter 561 in that section, the legislature expressed its intent that security interests in alcoholic beverage licenses are subject to the Uniform Commercial Code.

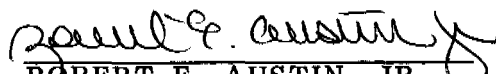
Appellees simply cannot escape the fact that Citizen's did not timely perfect its alleged purchase money security interest so as to displace the landlord's intervening lien. It, like any other secured creditor, was required to perfect a purchase money security interest within fifteen (15) days to be afforded retroactive protection. This it did not do.

Accordingly, both parts of the second certified question should be answered in the negative.

CONCLUSION

To the extent that the underlying decision finds the Citizens lien on the alcoholic beverage license is superior to that of the landlord, it should be reversed.


Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that copy hereof has been furnished to Fred A. Morrison, McLin, Burnsed, Morrison, Johnson & Robuck, 1000 West Main Street, Leesburg, Florida 34749-1357; to Chobe Investments, Inc. in care of John Bainter, 368111 North CR 44A, Eustis, Florida 32726; and to William Nickell, Department of Business Regulation, 725 South Bronough Street, Tallahassee, Florida 32399-1007 by mail this 13th day of April, 1993.


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