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IN THE SUPREME COURT
STATE OF FLORIDA

FILED
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MAR 15 1994
CLERK, SUPREME COURT
By
Chief Deputy Clerk

FLANIGAN'S ENTERPRISES, INC.,

Petitioner,

vs.

CASE NO.: 81,563
5TH DCA NO.: 92-104

BARNETT BANK OF NAPLES, et al.,

Respondent.

_______________________________/

PETITIONER'S REPLY BRIEF

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FIFTH DISTRICT, STATE OF FLORIDA

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STATEMENT OF THE FACTS

Flanigan disagrees with a portion of Barnett's Statement of Facts and, therefore, makes the following clarifications:

1. Contrary to Barnett's Statement of the Facts (para. 1), the Sub-Lease Agreement did refer to Flanigan's landlord lien rights arising under s. 83.08, Fla. Stat. On page 3, paragraph 5 of the Sublease, Flanigan reserved "all rights and remedies available to a landlord for breach of a lease. . . ." (R.705, Ex.2). Furthermore, on page 1, paragraph 1 of the Sub-Lease, Flanigan specifically incorporated the entire Prime Lease by reference. (R.703, Ex.2). The Prime Lease, which was attached to the Sublease, provided that " the lessor obtained a first lien on, among other things, the Liquor License". The Prime Lease further provides that "Such lien shall be <u>in addition</u> to the rights of a landlord given under the Statutes of the State of Florida, which are now or might hereafter be in effect." (emphasis added)(R.687, Ex.1, page 9, paragraph 10).

2. Contrary to Barnett's assertion in its Statement of the Facts (para. 5), the standard lien waiver it sent to Flanigan was not limited to "tangible property." The waiver requests the landlord to waive and relinquish "all right of levy or distraint for rent" and "all rights, claims and demands of every kind against the Collateral." "Collateral" is defined as "<u>any</u> property belonging to Borrower in which [Barnett] . . . claims a security interest." (emphasis added)(R.721,Ex.5). Since Barnett claimed a security interest in the Liquor License, an intangible, obviously the waiver was not limited to tangible property as Barnett would lead the Court to believe.

SUMMARY OF ARGUMENT

The District Court erred in holding that s. 818.01 afforded Flanigan no basis for relief against Barnett because of the conflict with s. 679.504(3). The two statutes can be harmonized by holding that the notice provisions of 679.504(3) control when the competing interests in the collateral are governed by Article 9 of the UCC. When non-Article 9 liens are involved, the written notice requirement of 818.01 should be enforced. Harmonizing 818.01 with 679.504(3) in this manner leaves secured creditor's rights intact while protecting the holder of the non-Article 9 lien. 679.504(3) does not purport to relieve a secured party from all liability it might otherwise incur to third parties by virtue of obligations not in conflict with Chapter 679.

The District Court erred further in holding that Flanigan was estopped from asserting its landlord's lien. Barnett failed to carry its burden of proving each element of estoppel by clear and satisfactory evidence. Making a claim under a security interest is not inconsistent with asserting a landlord's lien. The two remedies may be different, but they are not inconsistent so as to create an estoppel. Furthermore, Barnett did not rely on any representation of Flanigan when deciding to sell the License. Barnett had agreed to sell the License to Hickory Point before Kastner spoke to McMackin. Moreover, Barnett did not change its position to its detriment in reliance on any representation made by Flanigan. To the contrary, by selling the License Barnett received a windfall at Flanigan's expense. Having to return money to which one was never entitled does not equate to the detriment required to sustain an estoppel.

Flanigan is entitled to recover from Barnett the fair market value of the License at the time Barnett wrongfully acquired it. If not for Barnett's interference, Flanigan could have enforced its landlord's lien to have it sold at judicial sale and the proceeds applied to rent owed by its tenant, Level III. Any uncertainty as to the amount of rent that would have been due at the time distress proceedings might have been brought was created by Barnett's wrongdoing and should not be used to limit Barnett's liability for its own tortious conduct.

ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THAT SECTION 818.01 AFFORDED FLANIGAN NO BASIS FOR RELIEF AGAINST BARNETT BANK FOR DISPOSING OF THE LIQUOR LICENSE.

The District Court did not reconcile the conflict existing between sections 818.01 and 679.504(3) as asserted by Barnett on page 12 of its brief. Instead, the Court held that the written notice requirement of s. 818.01 could not be reconciled with s. 679.504(3) and, therefore, concluded that the written notice requirement of 818.01 had been impliedly repealed. The District Court did not repeal the entire statute, but held that it had no application in situations where a secured creditor complies with the requirements of s. 679.504(3) when disposing of collateral.

Barnett's brief contains citations to authority which state well-established rules of law which are not in issue or challenged by Flanigan. For instance, Flanigan agrees that inferior secured creditors can dispose of collateral subject to superior security interests, and in doing so, will be free from any recriminations from superior secured creditors. These rules, however, have no bearing on the issues of this case.

Specifically, Barnett's reference to the cases of Continental Bank v. Krebs, 184 Ill. App. 3rd 693, 133 Ill. Dec. 157, 540 N.E. 2d 1023, 10 U.C.C. 2d 246 (1989); United States v. Cohoon, 11 U.C.C. 2d 316 (E.D. N.C. 1990); and Chadron Energy v. First National, 236 Neb. 173, 459 N.W. 2d 718, 12 U.C.C. 2d 1183 (1990) is inapposite to the instant case. Barnett cites the cases as support for the proposition that inferior secured creditors (i.e., those with Article 9 security interests) can dispose of collateral without recriminations from prior lien creditors (i.e., those without Article 9 security interests). However, the cases cited by Barnett involve competing Article 9 security interests only, and simply say that the rights of a superior secured creditor are not cut off by the sale of collateral by an inferior secured creditor. Flanigan takes no issue with that proposition nor does it have any relevance to this case. Presumably, Barnett relies on the language in those cases saying that foreclosure of a security interest discharges the security interest under which the disposition of the collateral is made and any subordinate liens or security interests, and the purchaser normally takes subject to prior security interests. See, Continental Bank, 540 N.E. 2d at 1026; Chadron Energy, 459 N.W. 2d at 733. The cited cases do not support the proposition that inferior secured creditors are permitted to dispose of collateral that is subject to a prior **lien**, as opposed to a prior security interest.

The words "lien" and "security interest" are terms of art that have different meanings. These terms are not interchangeable. A security interest is an interest in personal property or fixtures which secures payment or performance of an obligation. Section 671.201 (37), Fla. Stat. The Uniform Commercial Code ("UCC") sets forth the formal requisites for acquiring a security interest, s. 679.203, Fla. Stat., methods for perfecting security interests, ss. 679.302-305, 401-403, Fla. Stat., and rights and obligations of a secured party when disposing of collateral upon the debtor's default, ss. 679.501-507, Fla. Stat. Article 9 of the UCC applies to any transaction intended to create a security interest in personal property. See s. 679.102 (1)(a), Fla. Stat. Specifically excluded are non-consensual liens such as statutory, judgment and landlord's liens. See, ss. 679.102(1)(b)(2), 104, Fla. Stat. On the other hand, the term "lien" encompasses an array of interests in property which may not be consensual or intended to create a security interest in personal property and, therefore, are excluded from Article 9. The words "security interest" and "lien" are not synonymous, and use of the terms interchangeably can only serve to obfuscate the issues that need to be decided.

Barnett urges that the conflict between ss. 818.01 and 679.504(3) can be resolved by resorting to the rule of statutory construction that specific statutes on a subject take precedence over another statute covering the same subject in the general terms. However, courts use this rule only when the competing statutes are irreconcilable. See Littman v. Commercial Bank & Trust Company, 425 So.2d 636, 639 (Fla.3rd DCA 1983). As argued in Flanigan's initial brief, ss. 818.01 and 679.504(3) can be harmonized by giving effect to s. 818.01 only where the competing interests in the property are not both governed by Article 9 of the UCC. Therefore, it is not necessary to engage in the exercise of statutory construction suggested by Barnett.

On pages 15 and 16 of its Answer Brief, Barnett voices its concern that Flanigan is simply asking this Court to ignore the obvious conflict between ss. 818.01 and 679.504(3). This could not be further from the truth. Flanigan recognizes that the conflict between 818.01 and 679.504(3) is irreconcilable when the competing interests are both governed by Article 9 of the UCC. However, where one of the competing interests is not controlled by Article 9, as in the instant case, the conflict vanishes. When faced with conflicting statutes, courts are duty-bound to try to harmonize the provisions. Singleton v. State, 554 So.2d 1162 (Fla. 1990); Carawan v. State, 515 So.2d 161 (Fla. 1987). In the absence of a showing to the contrary, it is presumed that all laws are consistent with each other and that the Legislature would not effect a repeal of the statute without expressing an intention to do so. Littman, 425 So.2d. at 638. Courts must assume that later statutes were passed with knowledge of prior existing laws, and will favor a construction that gives a field of operation to both rather than construe one statute as being meaningless or repealed by implication unless such a result is inevitable. Id. As noted by the Littman court, s. 818.01 was amended following the adoption of the UCC, demonstrating that the legislature found no conflict between the provisions.

425 So.2d at 639.

Flanigan has suggested that ss. 818.01 and 679.504(3) can be harmonized and each given a field of operation simply by removing the requirement for written consent contained in 818.01 when the competing interests involve security interests governed by Article 9 of the UCC. By harmonizing the statutes in this manner, the rights and responsibilities of a secured creditor under s. 679.504(3) remain unaffected. Flanigan discusses this in detail in its Initial Brief. Yet, Barnett responds only by making the conclusory statement that giving a field of operation to both statutes only protects "Landlord's liens at the expense of destroying the secured creditor's lien enforcement rights, thereby exacerbating the effect of the conflict." Barnett's brief contains no hint as to how a secured creditor's rights under s. 679.504(3) are affected, much less destroyed.

Contrary to Barnett's interpretation of the District Court's opinion, the Court did apply the provisions of the UCC to adjudicate Flanigan's interest in the Liquor License. Flanigan agrees that the Court's holding does not disturb the **priorities** between UCC secured creditors and parties asserting landlord's liens. However, priority of interest is not an issue in this case. It is clear that Flanigan's landlord's lien was superior to Barnett's security interest. The problem arises once a default occurs and the collateral is sold. Flanigan objects to the use of the UCC provisions to govern the **disposition** of collateral when it is subject to a non-UCC interest. Is it fair that Flanigan's rights in the Liquor License should be governed by the provisions of the UCC when Article 9 specifically excludes landlord's liens from its reach? Justice and fairness mandate that the answer be "no."

The Fourth District Court of Appeal faced a similar issue in Black, Starr & Frost v. Prestige Financial, Inc., 579 So.2d 297 (Fla. 4th DCA 1991). In that case, a lienor sued a pawnbroker under s. 818.01 for selling goods upon which the lienor had an enforceable security interest. The pawnbroker argued that s. 715.04, Fla. Stat., absolved it of any liability. Section 715.04, in pertinent part, provides that:

> . . . any sale or disposal of property under this section shall terminate all liability of the pawnbroker and shall vest in the purchaser the right, title and interest of the seller or borrower and the pawnbroker.

In rejecting the pawnbroker's argument, the court noted that Chapter 715 does not concern a pawnbroker's relationship with secured parties, and that s. 715.04 does not purport to relieve a pawnbroker from all liability it might otherwise incur to third parties by virtue of obligations <u>not in conflict</u> with Chapter 715.(emphasis added). Similarly, in the instant case, Chapter 679 does not concern landlord's liens as they are specifically excluded, and s. 679.504(3) does not purport to relieve a secured party from all liability it might otherwise incur to third parties by virtue of obligations not in conflict with Chapter 679.

Barnett argues that a secured creditor's transfer of collateral encumbered by a landlord's lien does not automatically wipe out the lien. Although transfer of the collateral may not <u>automatically</u> wipe out the landlord's lien, once the collateral is sold, a third party enters the picture and is entitled to assert rights to the property. Section 83.15, Fla. Stat., addresses this issue and provides a third party a vehicle for prosecuting its claim to the collateral. Furthermore, there are situations, such as the instant case, where a secured creditor's actions in disposing of collateral encumbered by a superior landlord's lien can have exactly the effect of wiping out the lien. In other cases, by transferring collateral to a third party, the interfering party can make enforcement of a landlord's lien against the personal property difficult or impossible. For example, if the third party purchaser absconds with the collateral, the landlord is effectively left with no property against which it can enforce its landlord's lien. Section 818.01 was enacted to proscribe such interference by requiring written consent of prior lienholders.

Barnett argues that s. 818.01 should not apply in those situations where a party holds a senior landlord's lien because the disposition of the collateral by a junior secured creditor would be subject to the senior landlord's lien. If this argument were valid, persons disposing of property subject to Article 9 security interests would not be subject to liability under s. 818.01 because the collateral would continue to be encumbered by and subject to the superior security interest of the secured creditor. Florida courts have rejected this argument. See Ford Motor Credit Co. v. Hanus, 491 So.2d 520 (Fla. 4th DCA 1986)(levying creditor who purchased truck at sheriff's sale liable to secured creditor when third party to whom truck was sold absconded with the collateral); Littman v. Commercial Bank & Trust Company, supra, (purchaser of forklift at sale by inferior secured creditor liable to superior secured creditor, even though sale was expressly subject to the superior security interest, when purchaser resold forklift to third party who vanished and absconded with the collateral); Black, Starr & Frost v. Prestige Financial, Inc., supra.

Lastly, Barnett's brief is devoid of any support for the conclusory statement found on page 17 wherein it states that the "only real devastating effect will be if the rights of secured creditors to enforce lien rights are abrogated by an overly broad application of Section 818.01." The quoted statement is supported by no discussion or insight as to how secured creditors' rights are abrogated. Flanigan is not suggesting that the Court give s. 818.01 an overly broad application; to the contrary, Flanigan suggests that its application be narrowed to circumstances where the competing interests in the collateral are not both governed by Article 9. In cases where the competing interests are governed by Article 9, s. 818.01 would have no application.

II. THE DISTRICT COURT ERRED IN HOLDING THAT FLANIGAN WAS ESTOPPED FROM ENFORCING ITS LANDLORD'S LIEN.

A. Flanigan's claim against the Liquor License based upon an unperfected security interest is not inconsistent with its assertion of a statutory landlord's lien.

Barnett argues that the inconsistency in Flanigan's positions in this action arose not from the differences in the nature of a security interest as opposed to a landlord's lien, but in the interest claimed by Flanigan in its dealings with Barnett. However, mere difference in the nature of the remedies does not make them inconsistent. For example, in the case of Richardson v. Myers, 143 So. 157 (Fla. 1932), a lessor proceeded at law to enforce its statutory landlord's lien. Later, the lessor proceeded in equity to foreclose its chattel mortgage which had been given to secure rent payments. The Court found that the lease was intended to be a chattel mortgage to secure the payment of rent in addition to the statutory lien for rent, and that enforcement of a landlord's lien was not inconsistent with the foreclosure of a consensual lien on the property of the lessee.

Barnett's attempt to compare Kastner's one telephone call to McMackin and a claim asserted in legal pleadings is inappropriate and simplistic. There are obvious and significant differences. In litigation, the parties deal with each other in an adversarial context and are governed by specific rules of procedure which provide, among other things, an opportunity for discovery. This cannot be compared to one informal telephone conversation between Flanigan and Barnett, especially when Barnett failed to disclose the material fact that it had located a buyer and was in the process of selling the License.

Barnett's statement that it reacted to Flanigan's claim based upon a security interest is refuted by the testimony of its own attorney.(R.86-92). By the time Kastner first contacted McMackin, Barnett had already entered into an oral agreement to sell the License to Hickory Point. Barnett's intention and course of action was unaffected by Kastner's comments as it had always intended to sell the License from the time it obtained it from Level III to the time it transferred it to Hickory Point.

Barnett suggests that Flanigan may have never realized it could assert a claim based upon a landlord's lien against the License. For argument's sake, if Flanigan had been unaware of its landlord's lien rights against the License, the Court's finding of an estoppel would have been equally erroneous. One of the essentials of estoppel is that the party sought to be estopped has knowledge of the rights and facts out of which the estoppel is alleged to have arisen. 22 Florida Jur. 2d, Estoppel and Waiver, Section 35.

B. Barnett Bank did not reasonably rely on the representations of Flanigan's general counsel that its claim was based upon an unperfected security interest.

For there to be an estoppel, the party asserting it must establish that it reasonably relied upon the representations of the other party and acted to its detriment. Ennis v. Warm Mineral Springs, 203 So.2d 514 (Fla.2d DCA 1967). To suggest that Barnett relied on Kastner's comments to McMackin in selling the License is not supported by the evidence and borders on the incredible. The testimony of Barnett's attorney clearly shows that the sale of the License to Hickory Point would have occurred even if McMackin had never communicated with Kastner.(R.86-92). If Barnett would have sold the License had Flanigan never contacted Barnett, how can Barnett claim that in carrying out its intent it did so in reliance on any comments Kastner may have made to McMackin? The simple answer is that it cannot.

Furthermore, Barnett's insinuations that Flanigan waived its lien is inappropriate. The trial court made no finding that Flanigan waived its landlord lien, but based its holding on the doctrine of estoppel. Aside from not being germane to this appeal, suggestions that Flanigan waived its lien are disingenuous. Barnett's standard practice is to require written landlord lien waivers whenever its borrower leases its business premises. (R.66-67). Barnett was aware that Flanigan had specifically refused to sign a landlord's lien waiver when Barnett made its loan to Level III in April of 1983. When Flanigan refused to waive its lien, McMackin concluded that Barnett's security interest was inferior to Flanigan's landlord's lien. (R.731,Ex.10). At trial, McMackin testified that he did not know that liquor licenses could be encumbered by a statutory landlord's lien. (R.83). Even if McMackin was mistaken about the law, Barnett should not receive a windfall because of it. For Barnett now to contend that failure to specifically assert a landlord's lien in one telephone conversation led it to believe that Flanigan had relinquished its rights is untenable, especially since Barnett was aware that Flanigan had rejected an earlier request to do so.

C. Barnett did not change its position to its detriment in reliance upon any representation by Flanigan in disposing of the Liquor License to Hickory Point.

Barnett argues that the change in position which supports the trial court's finding of estoppel was the closing of the sale of the License to Hickory Point. While the actual transfer of the License from Barnett to Hickory Point can be viewed as a change in position, it is not a change that can support the finding of estoppel. For an estoppel to lie, there must not only be a change in position, but the change must be detrimental to the party asserting estoppel. L.B. Price Mercantile v. Gay, 44 So.2d 87 (Fla. 1950). Indeed, at the heart of estoppel is the notion that the party asserting it has suffered some detriment caused by acting in reliance on the other party's representation.

In its brief, Barnett fails to discuss how it has suffered or will suffer any detriment by Flanigan's assertion of its landlord's lien. The reason, Flanigan submits, is that Barnett would have to concede that there is no detriment. At worst, Barnett would be required to disgorge the windfall it received when it sold the License to Hickory Point. Barnett's interest in the License was subordinate to Flanigan's lien and, therefore, Barnett was not entitled to the proceeds in the first place. Having to return money to which one was never entitled does not equate to the detriment required to sustain an estoppel.

Barnett speculates that, had Flanigan timely asserted its lien, any of a number of scenarios were possible, and that it may have dealt with its debtor differently or taken other steps to collect on its loan. The License was a primary source of collateral for Barnett's loan, and there is nothing in the record even to suggest that Barnett might have dealt with its debtor differently or that it consequently suffered any damage. (R.85-86). Speculating on what may have happened does not satisfy Barnett's burden of establishing by clear and satisfactory evidence that it would be damaged by judicial recognition of Flanigan's landlord's lien. See Barber v. Hatch, 380 So.2d 536 (Fla. 5th DCA 1980). Before an estoppel can be raised, there must be certainty, and the facts necessary to constitute it cannot be taken by argument or inference, nor supplied by intendment. Jarrard v. Associates Discount Corp., 99 So.2d 272 (Fla. 1957).

In its Initial Brief, Flanigan discusses how Barnett's position is no worse than it was before the sale of the License to Hickory Point. Barnett offers no argument to the contrary because, Flanigan submits, it cannot. Barnett responds only by attempting to draw attention away from this fact by asserting that the same could be said about Flanigan, and that "presumably" Flanigan could have recovered the License from Hickory Point. Barnett's statement is not only irrelevant to the issue of estoppel, it is also untrue.

The issue of detrimental change in position applies to the party asserting estoppel, not the party against whom it is asserted. Notwithstanding the irrelevancy, the record clearly shows that 19 days after Barnett transferred the License and well before Flanigan learned in April or May, 1985 of the sale (R.137-138), Hickory Point, filed bankruptcy under Chapter 11. (R.570-575). Contrary to Barnett's suggestion, Flanigan had no recourse against the License because liens for rent are avoidable by the trustee in bankruptcy. 11 U.S.C. s. 545(3),(4).

III. FLANIGAN'S DAMAGES ARE NOT LIMITED TO THE AMOUNT OF RENT OWING AT THE TIME THE LIQUOR LICENSE WAS REMOVED FROM THE LEASED PREMISES BUT SHOULD EQUAL THE FAIR MARKET VALUE OF THE LICENSE

Barnett relies heavily on In re: J.E. De Belle Co., 286 F. 699 (S.D. Fla. 1926), to support its argument that Flanigan's damages cannot exceed the amount of rent due and owing at the time the License was removed from the leased premises. Flanigan respectfully submits that In re: J.E. De Belle Co. offers no support for Barnett's contention under the facts of this case, and that Barnett overlooks the remedies that were available to Flanigan had Barnett not interfered.

The landlord's lien statute in effect at the time In re: J.E. De Belle Co. was decided is identical to the current s. 83.08, Fla. Stat., which provides:

> Every person to whom rent may be due, his heirs, executors, administrators and assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:
>
> (1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.
>
> (2) Upon all other property of the lessee or his sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of such property on the premises leased.

> (3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided for.

In J.E. De Belle Co., the tenant abandoned the leased premises and moved with all of its goods to another place of business. When the tenant vacated, the rent had been paid through the end of the month, but more than two years remained in the lease term. The tenant paid no more rent to the landlord. Meanwhile, the tenant did business at its new location for six months before filing bankruptcy. The landlord never instituted distress proceedings to enforce its statutory lien rights. The issue in the case was whether the landlord possessed a lien on the goods at the new location for failure to pay six month's rent at the old location.

The court reasoned that since no rent was due and owing at the time the tenant abandoned, there could be no lien arising under subsection (2) of the statute because there was no property "usually kept on the premises" to which it could attach. Therefore, the only way the landlord could obtain a lien on the tenant's goods was under subsection (3). Because the landlord did not comply with the requirement of a distress warrant, the court held that it was not entitled to a lien.

In re: J.E. De Belle Co. does not stand for the proposition that a landlord can only recover amount of rent due at the time the property is removed from the leased premises. It only holds that when distress proceedings are initiated, the landlord is only entitled to rent that has accrued. A landlord's lien is limited only by the amount of rent due at the time of judgment. See Lazzari v. Gordon, 214 So.2d 102 (Fla.3rd DCA 1968). In the instant case, rent was due at the time Barnett seized the License and continued to accrue thereafter. (R.130-131). Flanigan was entitled to use distress proceedings under s. 83.11, Fla. Stat., to have the License sold at judicial sale and the proceeds applied to rent owed by Level III. See G.M.C.A. Corp. v. Noni, Inc., 227 So.2d 891 (Fla.

3rd DCA 1969). This right was lost when Barnett sold the License to Hickory Point.

If Barnett had not interfered and Flanigan had been permitted to enforce its landlord's lien, it is only speculation as to how much rent Level III would have owed Flanigan by the time a distress writ was levied. Without a doubt it would have been more than the amount of rent due at the time Barnett acquired the License. By the time Flanigan filed suit, Level III owed Flanigan fifteen months back rent. (R.131,186-217,778, Ex.24). Any uncertainty as to the amount of rent that would have been due was created by Barnett's wrongful interference. Barnett should not be permitted to hide behind this uncertainty to limit its liability for its own tortious conduct. Barnett received the full amount of the proceeds from the sale of the License even though its security interest was inferior to Flanigan's lien. Justice requires that Barnett disgorge the proceeds it received from the sale of the License and that the money be awarded to Flanigan.

CONCLUSION

Barnett failed to establish each and every element of estoppel by clear and satisfactory evidence. Furthermore, s. 818.01 can be harmonized with s. 679.504(3) thereby providing Flanigan with a basis for recovery against Barnett. Barnett wrongfully interfered with Flanigan's rights to enforce its landlord's lien , thereby preventing Flanigan from having the License sold at judicial sale and applying the proceeds to rent owed by Level III. Therefore, the judgment of the appellate court should be reversed and this cause remanded to the trial court with instructions to enter judgment in favor of Flanigan in the amount of $110,000.00, plus prejudgment interest from July 14, 1984.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States regular mail to TUCKER H. BYRD, ESQUIRE, Post Office Box 1391, Orlando, Florida 32802-1391, on this 14 day of March 1994.

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