

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-2438

COMMERCIAL JET, INC., a  
Florida corporation,

Appellant,

v.

U.S. BANK, N.A., a  
foreign corporation,

Appellee.

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DISTRICT  
CASE NO. 3D10-619

LOWER  
TRIBUNAL NO. 09-49406  
Judge: Scott J. Silverman

APPELLANT, COMMERCIAL JET INC'S, INITIAL BRIEF

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## **INTRODUCTION**

Appellant, COMMERCIAL JET, INC., brings this appeal to seek review of the trial court's Order granting Summary Judgment in favor of Defendant/Appellee. Plaintiff/Appellant, COMMERCIAL JET, INC., will be referred to as "CJI." Defendant/Appellee, U.S. BANK N.A., will be referred to as "BANK." References to the Record will be denoted with the prefix "R-." References to the hearing transcript will be denoted with the prefix "T-(page number)." References to the appendix on appeal will be denoted with the prefix "A-."

## **STATEMENT OF THE CASE**

This suit was initiated by CJI seeking recovery for a breach of contract and to foreclose a mechanic's lien against a commercial jet aircraft. (R-3 through R-23; A-3). Defendants are the contracting entity, Silver Jet, a defunct foreign entity, and US Bank, N.A., who is the registered owner of the aircraft. BANK filed an answer to the complaint (R-24; A-4) and, after brief discovery, filed a Motion for Summary Judgment. (R-36; A-5). BANK's motion was granted by the trial court (R-86; A-2), and affirmed on appeal by District Court of Appeal, Third District (A-1).

## **STATEMENT OF FACTS**

The parties have stipulated to the basic facts. (R-37). In March 2008 Silver Jet, a foreign air carrier, contracted with CJI to have CJI perform repairs on a Boeing 767 aircraft, U.S. Registration No. N-480JC. After the services were completed and pending CJI's final bill, the aircraft was returned to service and Silver Jet took the aircraft and put it back to revenue service. Defendant, BANK, was the trustee/owner of the aircraft in accordance with the Federal Aviation Regulations.

Thereafter, Silver Jet failed to timely pay its invoice for the outstanding balance due CJI for the services rendered to the aircraft and on July 2, 2008, CJI filed a Verified Claim of Lien against the aircraft including Silver Jet, the operator of the aircraft, and BANK, as the trustee/owner, in accordance with Chap. 329, Fla. Stat. and Chap. 713, Fla. Stat.

## **SUMMARY OF ARGUMENT**

The District Court affirmed the trial Court's Order granting the BANK's Motion for Summary Judgment on the basis that CJI waived its lien interest in the aircraft by voluntarily returning the aircraft to the airline at the conclusion of the maintenance service. CJI's lien was based upon §713.58, Fla. Stat. (2011) and §329.51, Fla. Stat. (2011). §329.51, Fla. Stat. provides that anyone claiming a lien for services rendered to an aircraft under §713.58, Fla. Stat. has an "enforceable"

lien if it records a claim of lien within 90 days of completing the service.

Notwithstanding the clear language of §329.51, Fla. Stat., the District and Circuit courts engaged in statutory construction and then looked at cases interpreting §713.58, Fla. Stat. to be a possessory lien. The court incorrectly reasoned that since §713.58, Fla. Stat. was deemed a possessory lien, and since CJI did not have possession of the aircraft when CJI recorded the Claim of Lien, that CJI's lien right had been waived.

CJI argues that §329.51, Fla. Stat. is a modification of the general law concerning liens over personal property provided by §713.58, Fla. Stat. as that statute applies to aircraft and that possession of the aircraft is not required as long as the claim of lien is timely filed in accordance with the statute. CJI submits that §329.51, Fla. Stat. is not ambiguous and therefore not subject to judicial interpretation beyond the clear language of the statute. *Jones v. State*, 966 So. 2d 319 (Fla. 2007). However, if §329.51, Fla. Stat. is deemed ambiguous as a result of its reference to §713.58, Fla. Stat., then §329.51, Fla. Stat. as a specific statute dealing with liens on aircraft should be determinative over §713.58, Fla. Stat. which is a general lien statute applicable to all personal property. *School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So. 3d 1220 (Fla. 2009). Additionally, the District Court's opinion essentially renders §329.51, Fla. Stat. meaningless, contrary to *Martinez v. State*, 981 So. 2d 449 (Fla. 2008). For the



above main reasons, and those set forth below, CJI submits the District and Circuit Courts erred, requiring reversal by this Court.

## **ARGUMENT**

**THE TRIAL COURT ERRED AS A MATTER OF LAW BY INTERPRETING FLORIDA STATUTE 329.51 TO REQUIRE POSSESSION OF THE AIRCRAFT IN ORDER TO PERFECT A LIEN INTEREST IN THE AIRCRAFT BY A MAINTENANCE PROVIDER.**

### Standard of Review

As a preliminary matter, since the trial court ruled as a matter of law on BANK's Motion for Summary Judgment, and since the trial court's basis for granting the Motion was the trial court's interpretation of the language of the Florida Statutes, as was the opinion of the District Court, this Court's standard of review is de novo. *Curd v. Mosaic Fertilizer, LLC.*, 39 So.3d 1216 (Fla. 2010); *Therrien v. State*, 914 So.2d 941 (Fla. 2005)

CJI shall first review the applicable standards for interpreting the Florida Statutes followed by a review of the particular statutes involved in this litigation and completed by an analysis of the lower courts' erroneous rulings.

### Statutory Construction

The basic rules concerning statutory construction are firmly entrenched in numerous decisions of this Court. First, when reviewing a statute, a court must begin with the actual language used in the statute. *Heart of Adoptions, Inc. v. J.A.*,

963 So. 2d 189 (Fla. 2007); *Jones v. State, supra*. If the statutory language is clear and unambiguous, this Court has no need to resort to rules of statutory construction to determine the legislature's intent. *Jones, id.* In addition, the words used by the legislature in the statute must be given their plain meaning and the statutes involved in the review should be construed to give them their full effect. *Jones, id.* Where the language of a statute is clear and unambiguous a court shall not resort to additional rules of interpretation. *Therrien, supra*. To this end, there must be some ambiguity in the language of a statute as a prerequisite to judicial construction. In the absence of an ambiguity, the plain language of the statute prevails. *Martin County v. Edenfield*, 679 So. 2d 27 (Fla. 1992), citing *Holly v. Auld*, 450 So. 2d 217 (Fla. 1984). In fact, the courts lack the power to construe an unambiguous statute in a manner which modifies or limits its express terms. *Holly, supra*. Finally, a basic tenet of statutory construction provides that the legislature does not enact useless provisions and the courts should avoid interpretations that would render any part of a statute meaningless. *State v. Goode*, 830 So. 2d 817 (Fla. 2002); *State v. Moreno-Gonzalez*, 18 So. 3d 1180 (Fla. 3d DCA 2009); *Re-Employment Services, Ltd. v. National Loan Acquisitions Company*, 969 So. 2d 467 (Fla. 5th DCA 2007); *Martinez v. State, supra*; *Heart of Adoptions, Inc., supra*. Against this backdrop of statutory construction, CJI shall now review the statutes involved in this particular case.

## Florida Lien Law, Generally

Review of Florida Lien law evidences a general scheme to protect the payment of artisans who improve the property of another by granting the artisan a lien interest in the subject property.

Under Florida's common law, there was no lien right. *Regal Wood Products, Inc. v. First Wisconsin National Bank of Milwaukee*, 347 So. 2d 643 (Fla. 4th DCA 1977). Liens in Florida arise via statute. *Id.* The Florida legislature has created a statutory lien scheme in general under Chapter 713, Fla. Stat. (2011). The first part of this Chapter deals with construction liens. The second part of the Chapter deals with miscellaneous liens. Nothing within Chapter 713, Fla. Stat. specifically deals with liens on aircraft. However, §713.58, Fla. Stat. provides a general lien right against personal property in favor of persons who provided materials or services to such personal property. Nothing in §713.58, Fla. Stat. specifically requires possession in order to maintain a lien. Rather, §713.58, Fla. Stat. addresses the penalties against a person who, by use of trick or artifice, obtains possession of an item over which a lien was claimed in order to defeat the lien.

A review of §713.58, Fla. Stat. is appropriate. It states:

### **713.58. Liens for labor or services on personal property**

(1) In favor of persons performing labor or services for any other person, upon the personal property of the latter upon which the labor or services is performed, or which

is used in the business, occupation, or employment in which the labor or services is performed.

(2) It is unlawful for any person, knowingly, willfully, and with intent to defraud, to remove any property upon which a lien has accrued under this section without first making full payment to the person performing labor or services of all sums due and payable for such labor or services or without first having the written consent of such person so performing the labor or services so to remove such property.

(3) In that the possessory right and lien of the person performing labor or services under this section is released, relinquished, and lost by the removal of such property upon which a lien has accrued, it shall be deemed prima facie evidence of intent to defraud if, upon the removal of such property, the person removing such property utters, delivers, or gives any check, draft, or written order for the payment of money in payment of the indebtedness secured by the lien and then stops payment on such check, draft, or written order.

(4) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not more than \$500 or imprisonment in the county jail for not more than 3 months.

Sub paragraph 1 clearly creates a lien for persons performing labor or services upon the personal property of another. Sub paragraph 2 makes it unlawful for the owner of personal property to attempt to remove the property from the lienor without payment. Sub paragraph 3 provides that the provision of bad check or stopping payment upon a check after obtaining possession of the property

constitutes prima facie evidence of intent to defraud the lienor by the owner.

Finally, sub paragraph 4 provides for a criminal penalty for violation. Only sub paragraph 1 provides a lien right.

The legislature also created a scheme for the enforcement of statutory liens. That scheme is set forth in Chapter 85, Fla. Stat. (2011). Relevant to this Court's analysis herein, §85.011, Fla. Stat. (2011) provides that a statutory lien, such as either the general lien on personal property under §713.58 , Fla. Stat. or specific lien on aircraft under §329.51, Fla. Stat., may be enforced by possession for a period not to exceed 90 days, actions at law, chancery, or summary procedure.

Unlike §713.58, Fla. Stat. which grants a general lien right against miscellaneous personal property, §329.51, Fla. Stat. is specific to aircraft. Chapter 329, Fla. Stat. (2011) addresses the very different nature of aircraft as opposed to other personal property. First, unlike other personal property, when aircraft require repair, they often cannot be flown or towed down the street to a repair facility. Repairs occur wherever the aircraft may be located. While in this particular instance the subject aircraft was brought to CJI's facility for scheduled maintenance, §329.51, Fla. Stat., applies equally to large aircraft maintenance performed at a maintenance facility as well as to smaller entities, often consisting of only licensed mechanics who perform maintenance and repairs on aircraft wherever the aircraft may be located, such as the owner's private hangar or on the

airport tarmac where the aircraft is normally parked. In the latter case, those mechanics are no more in possession of the aircraft than a roofer is in possession of the house whose roof he has repaired. §329.51, Fla. Stat. applies in all of these situations.

In construing §713.58, Fla. Stat., the courts have caught upon the provision in §713.58 (3), Fla. Stat. which provides that a lien right continues to survive notwithstanding the loss of possession by the lienor if such loss was occasioned by the owner's issuing a bad check for payment of the amount claimed or stops payment on a check issued for that purpose. As such, there is a line of cases providing that §713.58, Fla. Stat. is a possessory lien. See, e.g. *State v. Miller*, 373 So. 2d 677 (Fla. 1979); *Archive America, Inc. v. Variety Children's Hospital*, 873 So. 2d 359 (Fla. 3d DCA 2004). However, had the legislature been satisfied with the courts' interpretation of §713.58, Fla. Stat., there would have been no new need to create §329.51, Fla. Stat.

The legislature is deemed to be aware of judicial interpretations of statutes. *Newman v. State*, 738 So. 2d 981 (Fla. 2d DCA 1999); *Ford v. Wainwright*, 451 So. 2d 471 (Fla. 1984). The operative section of the general lien statute, §713.58 (1), Fla. Stat. was enacted in 1970. The specific provision regarding liens on aircraft contained in §329.51, Fla. Stat. was enacted in 1983. Based on the foregoing, if the legislature was satisfied with the court's interpretation of §713.58,

Fla. Stat. as it applies to aircraft, there would have been no need for §329.51, Fla. Stat. But the legislature did enact §329.51, Fla. Stat. and in so doing stated clearly that in order to have a perfected lien interest in an aircraft a claimant need only record its Claim of Lien within 90 days after last performing the work or services.

#### Chapter 329, Fla. Stat.

The provisions of the general lien law against personal property provided in §713.58, Fla. Stat. notwithstanding, the legislature passed a separate statute specifically recognizing lien right in aircraft via Chapter 329, Fla. Stat. Chapter 329, Fla. Stat. specifically deals with various unique issues regarding aircraft.

Chapter 329, Fla. Stat., deals with “Aircraft: title; registration; liens.” The Chapter consists of only 6 subparts. §329.01, Fla. Stat. (2011) involves recording instruments affecting civil aircraft. This is a recording statute that simply says that no instrument affecting a title interest in a civil aircraft is valid until it is recorded with the Federal Aviation Administration (“FAA”). §329.01, Fla. Stat. is clearly a recording statute.

§329.10, Fla. Stat. (2011) is entitled “Aircraft registration.” It creates criminal penalties for a person to have possession of an aircraft that is not properly registered with the FAA, or who provides false information to any governmental entity regarding the ownership or operation of an aircraft within the State of Florida.

§329.11, Fla. Stat. (2011) is entitled “Aircraft identification numbers; penalties.” This makes it unlawful for a person to sell, receive or dispose of any aircraft or part thereof on which the assigned identification numbers do not meet the requirements of the Federal Aviation Regulations (“FAR’s”). Violation of the statute constitutes a third degree felony.

§329.40, Fla. Stat. (2011) is entitled “Airport facilities; lien for landing and other fees.” It provides that the governing body of a publically owned airport shall have a lien on any aircraft landing at the airport for all fees and charges for the use of the facilities by the aircraft. Importantly, this is a possessory lien enforced in the same manner as a warehouse lien, namely, by possession. See *Archive America Inc. v Variety Children’s Hosp.*, *supra*, and §677.209, Fla. Stat. (2011). §329.40, Fla. Stat. also provides for criminal sanctions for any person who removes or attempts to remove any such aircraft from an airport claiming a lien.

§329.41, Fla. Stat. (2011) is entitled “Lien for fuel furnished to aircraft.” This simply provides that any person who provides fuel to an aircraft has a lien upon the aircraft for any unpaid fuel charges. The statute states that the lien is enforceable in the same manner as provided in §329.51, Fla. Stat. This is an important distinction. The legislature wanted the liens under §329.40, Fla. Stat. to be enforced by possession, but for liens under §329.41, Fla. Stat. the legislature chose a different enforcement procedure, it merely required compliance with



§329.51, Fla. Stat. Much like §329.51, Fla. Stat., §329.41, Fla. Stat. is a remarkable statute addressing a very unusual aspect unique to aircraft. Obviously, large aircraft can and do utilize vast quantities of fuel costing tens of thousands of dollars per fill-up. Although the provision of fuel to an aircraft temporarily increases the value of the aircraft, that value is lost at the conclusion of the flight when the fuel is consumed. Nonetheless, the legislature enacted this unique statute to protect those who provide fuel to aircraft.

Finally, the last section is §329.51, Fla. Stat. entitled “Liens for labor, services, fuel, or material expended upon aircraft; notice.” It states:

Any lien claimed on an aircraft under s. 329.41 or s. 713.58 is enforceable when the lienor records a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the labor, services, fuel, or material was last furnished. The lienor must record such lien notice within 90 days after the time the labor, services, fuel, or material was last furnished. The notice must state the name of the lienor; the name of the owner; a description of the aircraft upon which the lienor has expended labor, services, fuel, or material; the amount for which the lien is claimed; and the date the expenditure was completed. This section does not affect the priority of competing interests in any aircraft or the lienor's obligation to record the lien under s. 329.01.  
[Emphasis ours.]

The first sentence clearly creates a lien right and specifically provides that an entity, such as CJI, shall have an enforceable lien if, within 90 days of completing the work, it records a Claim of Lien in accordance with the Florida

Statutes. If the legislature wanted liens under §713.58, Fla. Stat. to exist and be enforced solely by possession, it could have omitted the reference to §713.58, Fla. Stat. here and left the current body of law interpreting that statute as it is. In the alternative, the legislature could have reinforced the existing possessory enforcement procedure by stating that liens under §713.58, Fla. Stat. should be enforced as provided for enforcement of warehouse liens, as it mentioned only two sections previously. The different treatment by the legislature for enforcement of liens claimed against aircraft under §329.41, Fla. Stat. and claimed under §713.58, Fla. Stat. is patent and clear. §329.51, Fla. Stat. clearly and unequivocally states such liens are “...enforceable when the lienor...” records its claim within 90 days. Where the statutory language is clear and unambiguous, the court shall not look beyond the statute’s plain language. *Kasischke v. State*, 991 So. 2d 803 (Fla. 2008).

Finally, the last sentence of §329.51, Fla. Stat. states that the section does not affect the lienor’s obligation to record the lien under §329.01, Fla. Stat. It is clear from this last sentence that the legislature did not intend for §329.51, Fla. Stat. to be a mere recording statute. The recording statute is contained in §329.01, Fla. Stat. §329.51, Fla. Stat. clearly describes what is required to have an enforceable lien for either fuel furnished to an aircraft under §329.41, Fla. Stat. or for materials and labor provided under §713.58, Fla. Stat.

CJI submits that the legislature obviously recognized the expediency with which commercial aircraft must be returned to revenue generating service. This intent is supported by the different treatment the legislature gave to those who provide fuel (§329.41, Fla. Stat.) and services (§713.58; §329.51, Fla. Stat.) to aircraft. Large commercial aircraft generate huge amounts of revenue while in service. This revenue stream cannot be delayed while waiting to pay the fuel bill or waiting to find out the cost of the last minute service or overhaul of a critical component of the aircraft. Following the express language of §329.51 allows these suppliers (fuel or maintenance) to safely and immediately release the aircraft to revenue service without concern their lien rights will be lost.

#### Lower Courts' Misconstruction of Law

With regard to §329.51, Fla. Stat., nothing therein requires possession of the aircraft. Nothing in the language of §329.51, Fla. Stat. is ambiguous. Based upon the foregoing, there being no ambiguity, there was no basis for the lower courts to engage in judicial construction. The lower courts were caught up by the reference to §713.58, Fla. Stat. and, rather than accept the requirements of this specific statute with regard to aircraft, they instead incorporated the legal interpretations of §713.58, Fla. Stat. to the extent that those interpretations provide that the lien is lost if possession of the item is lost. CJI respectfully submits that the lower courts erred as a matter of law in so doing.

Assuming, arguendo, that this Court also finds the reference to §713.58, Fla. Stat. contained within §329.51, Fla. Stat. renders §329.51, Fla. Stat. ambiguous, then the court must also utilize additional rules of statutory construction. First, CJI submits that §329.51, Fla. Stat. is a remedial statute providing a remedy to persons who provide labor, materials, or services to aircraft, a highly mobile asset. As a tenet of judicial construction, remedial laws are broadly construed in order to give effect to the remedy the legislature created. *Citrus County v. Hall River Development, Inc.*, 8 So. 3d 413 (Fla. 5th DCA 2009). In addition, when the court is reviewing seemingly disparate provisions of law, it must do so in a manner that reconciles the issues in order to give effect to all parts of the statute. *State v. Moreno-Gonzalez, supra*; *Barr v. Department of Health, Board of Dentistry*, 954 So. 2d 668 (Fla. 1st DCA 2007). In fact, the court should never construe a statute in a manner which renders the statute meaningless. *Re-Employment Services, Ltd., supra*. Finally, where the legislature creates a specific statute, it is deemed to be controlling over a general statute. *School Board of Palm Beach County v. Survivors Charter Schools, Inc., supra*.

Applying the above provisions to the lower courts' interpretation of the statutes above first shows that §329.51, Fla. Stat. is a remedial statute and, therefore, it should be granted broad interpretation to facilitate the remedy the legislature sought to provide; to wit, a lien right in aircraft for entities who

performed work or services or provided materials to aircraft. However, the lower courts' interpretation instead made the general statute, which simply provides a lien right over personal property contained in §713.58, Fla. Stat. to be controlling over the specific statute and lien right created in §329.51, Fla. Stat. Based on the foregoing, the lower courts erred as a matter of law.

The lower courts also erred when they interpreted §329.51, Fla. Stat., via its reference to §713.58, Fla. Stat., to require possession. §329.51, Fla. Stat. specifically provides that an entity will have an enforceable lien if it simply records a Claim of Lien with the Clerk of the Court within 90 days of completing the work. However, the District Court's opinion effectively renders §329.51, Fla. Stat. a nullity. This is contrary to the rules of judicial construction set forth above in *School Board of Palm Beach County, supra*. The District Court's opinion fails to give any effect to the legislature's provision that an entity will have an enforceable lien upon recording. The District Court's opinion is contrary to this Court's opinion in *Martinez v. State, supra*, wherein this Court stated that a basic rule of statutory construction is that the legislature does not intend to enact useless provisions and, as such, courts should avoid interpretations that render any part of a statute meaningless. Notwithstanding the above, that is precisely what the lower courts did, thereby requiring reversal by this Court.

## CONCLUSION

In summary, §329.51, Fla. Stat. is clear and unambiguous and, therefore, not subject to judicial interpretation. It simply provides that an entity claiming a lien who files a required notice within 90 days after completion of the services rendered shall have an enforceable lien. That is what CJI did and, therefore, pursuant to the statute CJI has an enforceable lien.

However, assuming arguendo that there is some ambiguity within §329.51, Fla. Stat. that gives rise to the opportunity for judicial construction, the principles of judicial construction providing: that remedial statutes such as §329.51, Fla. Stat. should be broadly construed; that specific statutes such as §329.51, Fla. Stat. involving liens on aircraft should control over general statutes such as §713.58, Fla. Stat. which provides a lien of a miscellaneous personal property; that the courts are constrained to interpret the legislature's enactments in a manner that give effect to all the provisions of the statutes and not treat any of the language as a surplusage; and, that the legislature does not intend to pass useless provisions, all weigh against the lower courts' interpretation of §329.51, Fla. Stat.

A careful review of, Chap. 329, Fla. Stat. discloses the difference in the legislature's treatment of the various lien rights. §329.40, Fla. Stat., providing for a lien in favor of a government owned airport provides for a possessory enforcement. However, §329.41, Fla. Stat. simply provides a lien right for persons providing fuel

to aircraft upon recording a claim of lien per §329.51, Fla. Stat. §329.51, Fla. Stat. then provides that persons claiming liens under §329.41, Fla. Stat. (omitting the airport's lien under §329.40, Fla. Stat. which is to be enforced by possession) and persons claiming lien against an aircraft pursuant to §713.58, Fla. Stat. shall have an enforceable lien if they record a Claim of Lien within 90 days. The legislature clearly intended that §329.51, Fla. Stat. provided lien rights without retention of possession. Had the legislature intended to create a simple recording statute it would have said that persons claiming a lien under §329.41, Fla. Stat. or §713.58, Fla. Stat. must record a Claim of Lien within 90 days after the provision of the services. But the legislature went much farther than that. The legislature stated that persons claiming liens under those two sections have enforceable liens if a verified lien notice is filed with the Clerk of Court within 90 days. Any other interpretation would render this language a nullity and in violation of the tenets of statutory construction.

For the reasons set forth above, Appellant respectfully requests this Court issue its opinion reversing the trial court's order granting summary judgment and the District Court's affirmance, determining that §329.51, Fla. Stat. does not require that entities claiming a lien against an aircraft pursuant to §713.58, Fla. Stat. must retain possession of the aircraft, that CJI is entitled to attorney's fees

pursuant to §85.011, Fla. Stat., and such further relief as this court deems equitable or just.

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**CERTIFICATE OF SERVICE**

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief was prepared using Times New Roman in 14-point type.

Dated this 2<sup>nd</sup> day of June, 2011.

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