

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-2438

COMMERCIAL JET, INC.,)
)
 Petitioner,)
)
v.)
)
U.S. BANK, N.A.,)
)
 Respondent.)
_____/

LOWER
TRIBUNAL CASE NO. 3D10-619

PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

RESPONDENT’S BRIEF ON JURISDICTION

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INTRODUCTION

Petitioner Commercial Jet, Inc. (“CJI”) argued below that section 329.51, Florida Statutes modified section 713.58 to eliminate the requirement of possession for aircraft repairpersons who claim a lien under section 713.58.

The trial court disagreed with CJI’s interpretation of the statute and granted Respondent U.S. Bank, N.A.’s (“U.S. Bank”) motion for summary judgment on the point. The Third District Court of Appeal affirmed the trial court’s order and subsequently denied CJI’s motion for rehearing en banc or by the panel.

CJI now seeks to invoke this Court’s conflict jurisdiction by claiming a conflict exists because the Third District Court of Appeal did not apply general rules of statutory construction correctly. Since the opinion neither conflicts with earlier appellate decisions nor involves facts substantially similar to those found in earlier decisions, there is no basis for invoking this Court’s conflict jurisdiction.

STATEMENT OF CASE AND FACTS

CJI, an aircraft service facility, had a contract with Silver Jet to perform repairs on a Boeing 767 aircraft that Silver Jet was operating. U.S. Bank owned the aircraft and had leased it to Silver Jet. *See* Slip op. at 2.¹ CJI completed the repairs, received partial payment for the work performed, and then returned the aircraft to Silver Jet before it had been fully paid. *See id.* After CJI relinquished

¹ Citations are to the slip opinion included in CJI’s Appendix.

possession of the aircraft, it recorded a claim of lien for the unpaid portion of the repairs. *Id.* CJI claimed a lien under sections 713.58 and 329.51, Florida Statutes. *Id.* Thereafter, CJI instituted the instant lien foreclosure against only U.S. Bank.

U.S. Bank moved for summary judgment on the foreclosure claim because it was undisputed that CJI had made no effort to assert a claim of lien until after it had returned possession of the aircraft to Silver Jet. *See id.* While CJI conceded that liens claimed under section 713.58 are possessory liens (i.e. the right to claim a lien exists only so long as the property is in possession of the claimant), it contended that section 329.51 grants to aircraft repairpersons additional lien rights and eliminates the requirement that possession is necessary to assert a claim of lien under section 713.58. *See id.* at 3.

The trial court granted U.S. Bank's summary judgment motion. *Id.* at 2. The Third District affirmed the trial court's order and rejected CJI's argument that section 329.51 created new lien rights or modified section 713.58. *See id.* at 2-4. In so doing, the panel majority recognized that section 713.58 expressly provides that "the possessory right and lien of the person performing labor and services under this section is released, relinquished, and lost by the removal of such property" *Id.* at 2 (quoting § 713.58, Fla. Stat. (2009)). The lower court then confirmed longstanding precedent that a lien claimed under section 713.58 is

possessory in nature and therefore “exists only so long as the person entitled to the lien retains possession of the property upon which the lien is claimed[.]” *Id.* at 2-3.

The panel majority also rejected CJI’s argument that section 329.51 created a new lien right in favor of persons servicing aircraft. The Third District held that section 329.51 is “manifestly a notice statute” and does not create independent lien rights. *Id.* at 3. The court recognized that section 329.51 deals in the *perfection* of lien rights created elsewhere, namely sections 329.41 and 713.58. *See id.* at 4. The court explained that “[s]ection 329.51 details how, once a fuel or service provider acquires a lien on an aircraft pursuant to section 329.41 [which *does* creates a lien right in favor of aircraft fuel providers, not applicable here] or pursuant to 713.58, he may perfect his lien and establish priority of enforcement as it relates to third parties.” *Id.* at 3. Because CJI conceded that it had relinquished possession of the aircraft before it attempted to claim a lien pursuant to section 713.58 [and because section 329.41 did not apply], the panel majority concluded that CJI did not have a lien on which to foreclose. *See id.* at 4. Thereafter, the Third District denied CJI’s motion for rehearing en banc or a panel rehearing.

SUMMARY OF ARGUMENT

Article V, section 3(b)(3) of the Florida Constitution allows this Court to exercise jurisdiction where a district court opinion conflicts with an earlier appellate opinion. A conflict is established only if the district court’s ruling

conflicts with a prior ruling or if the district court applies a rule of law to produce a result different from the result in an earlier case involving substantially the same facts. Neither ground exists here. An examination of CJI's argument reveals a fundamental misunderstanding of the nature of conflict jurisdiction.

CJI argues the Third District's opinion directly conflicts with four opinions of this Court that set forth general rules of statutory construction and which are wholly unrelated to the lien statutes at issue here. Notably however, CJI does not contend that the Third District's ruling contradicts the holdings of those prior opinions. Instead, CJI argues the Third District incorrectly applied the rules of construction to the case at bar. Since the challenged opinion does not conflict with the cases cited (or any other case) and because the opinion concerned facts wholly unrelated to the earlier cases, there is no basis for conflict jurisdiction. This Court consistently has held that conflict jurisdiction is not available to merely dispute a lower court's application of unrelated precedent – even if this Court disagrees with the result below. Thus, the Court should decline to review the opinion.

ARGUMENT

The purported basis for jurisdiction is an express and direct conflict with opinions of this Court. (I.B. at 2).² To qualify as a conflict on which jurisdiction

² Citations to Petitioner's initial brief on jurisdiction are indicated by the acronym "I.B."

may be based, an opinion must either (1) announce a rule of law that conflicts with other appellate expressions of law or (2) apply a rule of law to produce a different result in a case involving substantially the same controlling facts as a prior case.

City of Jacksonville v. Fla. First Nat'l Bank of Jacksonville, 339 So. 2d 632, 633 (Fla. 1976) (citing *Nielsen v. City of Sarasota*, 117 So. 2d 731, 734 (Fla. 1960)).

Additionally, the conflict must appear within the four corners of the majority opinion. *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).³ As discussed below, the majority opinion issued here does not conflict with any prior appellate opinion and the Court does not have discretionary jurisdiction.

I. THE RULE OF LAW ANNOUNCED BELOW DOES NOT CONFLICT WITH OTHER APPELLATE EXPRESSIONS OF LAW.

CJI contends that the Third District's pronouncement that section 329.51 does not create an independent lien right (Slip op. at 3) "conflicts with well-settled law concerning the judicial construction of statutes." (I.B. at 4). CJI cites four opinions with which it contends this rule conflicts. (*Id.*). None of those opinions, however, even concerned section 329.51, let alone announced a rule of law that

³ In *Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986), this Court also made clear that it is error to include facts in a jurisdictional brief that are beyond the four corners of the decision under review. *See Reaves*, 485 So. 2d at 830 n.3. Notwithstanding the opinion, CJI includes facts, legal conclusions, and policy arguments in its statements of the case and of facts that are not found in the subject decision and facts that are not anywhere in the record below. (I.B. at 1-2).

conflicts with the Third District's holding that section 329.51 does not create a new lien right. *See* pp. 8-9, *infra*.

The opinions on which CJI attempts to ground its jurisdictional argument set forth three principles of statutory construction: (1) that words in a statute must be given their plain meaning, *Jones v. State*, 966 So. 2d 319, 326 (Fla. 2007); (2) that specific statutes covering a subject matter will control over general statutes covering the same subject, *School Board of Palm Beach County v. Survivors Charter Schs., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009); and (3) that courts should avoid readings that would render part of a statute meaningless, *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002); *State v. Martinez*, 981 So. 2d 449, 452 (Fla. 2008). There is nothing in the opinion that remotely suggests the Third District disagreed with any of these rules of construction.

Nor does the rule announced by the panel majority—that section 329.51 does not create a lien right—contradict any other appellate expression of law in this state. No Florida court has interpreted section 329.51 and none has addressed the question of whether it creates a new lien right. In fact, there are only two other opinions that have referenced section 329.51; neither addresses the question before the Third District in this case. In *Creston Aviation, Inc. v. Textron Financial Corp.*, 900 So. 2d 727 (Fla. 4th DCA 2005), the Fourth District held that section 329.51 was not preempted by federal law requiring notice of an aircraft mechanic's

lien to be filed with the Federal Aviation Administration. *See Creston Aviation*, 900 So. 2d at 728. The court did not interpret the text of section 329.51 and did not address any issue before the court below. *See id.* at 728-32.

The only other published opinion citing section 329.51, *General Electric Capital Corp. v. Advance Petroleum, Inc.*, 660 So. 2d 1139 (Fla. 3d DCA 1995), involved the question of the trial court’s jurisdiction over the owner of an aircraft in an action to foreclose a claim of lien for unpaid fuel charges. *See Gen. Elec.*, 660 So. 2d at 1141-42. The Third District affirmed the trial court’s orders, mentioning section 329.51 only to note that the plaintiff had filed a verified notice of lien in Dade County for the balance owed it by the defendant and therefore had a “valid, *perfected* lien on the subject aircraft” pursuant to both section 329.41, which creates a lien for fuel charges, and section 329.51. *See id.* at 1141 (emphasis added). The court in *General Electric* did not interpret section 329.51 and did not discuss whether the provision creates a lien right in favor of aircraft mechanics. Indeed, the reference to the lien recorded in *General Electric* as a “perfected” lien supports the panel majority’s holding in the instant case that section 329.51 is “manifestly a notice statute.” Slip op. at 3. Accordingly, no conflict exists between the opinion below and prior appellate expressions of law.⁴

⁴The panel majority also confirmed in its opinion that the lien right created by section 713.58, Florida Statutes is possessory in nature. Slip op. at 2-3. This holding, as CJI implicitly concedes by not arguing otherwise, does not create a

II. THE RULES OF LAW APPLIED BELOW DID NOT PRODUCE A RESULT DIFFERENT FROM THE RESULT IN A CASE WITH SUBSTANTIALLY THE SAME CONTROLLING FACTS.

Because the rule of law announced by the court below does not conflict with another appellate expression of law, CJI must demonstrate that the majority misapplied the cited rules of statutory construction to produce a result that conflicts with the result in another case “*involving substantially the same controlling facts.*” *City of Jacksonville*, 339 So. 2d at 633 (emphasis added). CJI cannot satisfy this requirement since no Florida court has considered either section 713.58 or section 329.51, Florida Statutes on facts similar to those presented below.

Unsurprisingly, none of the cases that CJI cites as conflicting opinions involves facts remotely similar to the facts of this case. Not one of the four opinions addressed a lien of any kind, let alone a claim of lien in favor of aircraft mechanics. *See Survivors Charter Schs.*, 3 So. 3d at 1223-24 (addressing school board’s adherence to Administrative Procedures Act in terminating school charters); *Martinez*, 981 So. 2d at 450-51 (addressing propriety of forcible-felony

conflict in Florida jurisprudence. To the contrary, the court’s holding in this regard accords with longstanding precedent. *See, e.g., State v. Miller*, 373 So. 2d 677, 678 (Fla. 1979) (“appellee invoked the provisions of section 713.58, Florida Statutes, which grants a possessory lien in favor of persons providing labor and services on personal property”); *Archive Am., Inc. v. Variety Children’s Hosp.*, 873 So. 2d 359, 362 (Fla. 3d DCA 2004) (referencing a “possessory lien established by section 713.58”); *see also Eastern Airlines Employees Fed. Credit Union v. Lauderdale Yacht Basin, Inc.*, 334 So. 2d 175, 177 (Fla. 4th DCA 1976) (describing section 713.58 lien as “a mechanic’s possessory lien against personal property”).

instruction on self defense); *Jones*, 966 So. 2d at 321 (addressing imposition of death penalty on impaired defendant); *Goode*, 830 So. 2d at 818 (affirming procedural dismissal of involuntary commitment proceedings against appellee).

CJI's argument demonstrates a fundamental misunderstanding of conflict jurisdiction. CJI claims a conflict exists because the panel majority applied rules of statutory construction to reach a result that CJI believes is incorrect. (I.B. at 2-4). Thus, CJI simply argues that the panel majority's application of settled law to the unique facts of this case constitutes the requisite conflict—even though the majority never disagreed with a prior ruling. The panel majority did not misapply any precedent. But, the mere misapplication of precedent alone does not constitute a showing that the holding below *conflicts* with an earlier opinion to meet the jurisdictional requirement.

If there was such a low threshold, then every losing party could claim a conflict and invoke this Court's jurisdiction. This result would defeat the limited purpose of the Court's conflict jurisdiction, which is "to stabilize the law by a review of decisions which form patently irreconcilable precedents." *Florida Power & Light Co. v. Bell*, 113 So. 2d 697, 699 (Fla. 1959); *see Golden Loaf Bakery, Inc. v. Charles W. Rex Constr. Co.*, 334 So. 2d 585, 586-87 (Fla. 1976) ("obvious and limited purpose" of conflict jurisdiction is to allow court to clarify the law when a conflict exists); *N&L Auto Parts Co. v. Doman*, 117 So. 2d 410,

412 (Fla. 1960) (“Our concern is with the decision under review as a legal precedent to the end that conflicts in the body of the law of this State will be reduced to an absolute minimum and that the law announced in the decision of the appellate courts of this State shall be uniform throughout.”). In keeping with this purpose, this Court consistently holds that it lacks jurisdiction to review opinions in which a rule of law was allegedly misapplied to the facts of the case, *even if it might disagree with the decision of the district court*. See, e.g., *Mancini*, 312 So. 2d at 733 (“[o]ur jurisdiction cannot be invoked merely because we might disagree with the decision of the district court”); *Golden Loaf Bakery*, 334 So. 2d at 587 (“Where our views on a matter of law are not absolutely necessary, we should not express them.”); *Nielsen*, 117 So. 2d at 734-35 (“When our [conflict] jurisdiction is invoked ... we are not permitted the judicial luxury of upsetting a decision of a Court of Appeal merely because we might personally disagree with the so-called ‘justice of the case’ as announced by the Court below.”).

Thus, CJI’s argument that the court below reached the wrong result does not create a conflict that permits this Court to exercise the discretionary jurisdiction provided under Article V, section 3(b)(3) of the Florida Constitution.

CONCLUSION

There is no basis for the Court to accept jurisdiction to review the opinion below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail this 3rd day of January, 2010, to David M. McDonald, Esq., McDonald & McDonald, 1393 Southwest 1st Street, Suite 200, Miami, Florida 33135-2321.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman 14-point font in compliance with Fla. R. App. P. 9.210(a)(2).

Rachel Sullivan