

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.

DISTRICT
CASE NO. 3D10-619

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

APPELLANT, COMMERCIAL JET INC'S, JURISDICTIONAL BRIEF

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INTRODUCTION

This case involves the interpretation of Fla. Stat. §329.51 which provides for a mechanic's lien against aircraft upon which services have been performed and the interaction of that statute with the general mechanics lien statute, Fla. Stat. §713.58 and the common law interpreting Fla. Stat. §713.58.

STATEMENT OF THE CASE

This suit was initiated by Commercial Jet, Inc. ("CJI") seeking recovery for a breach of contract and to foreclose a mechanics lien against a commercial jet aircraft. (R-3 through R-23; A-2). Defendants are the contracting entity, Silver Jet, a defunct foreign entity, and US Bank, N.A., who is the registered owner of the aircraft. US Bank filed an answer to the complaint (R-24; A-3) and, after brief discovery, filed a Motion for Summary Judgment. (R-36; A-4). US Bank's Motion was granted by the trial court. (R-86; A-1). After denial of CJI's Motion for Reconsideration (R-43; A-5), CJI sought review by the District Court of Appeal, Third District. The District Court issued an Opinion affirming the grant of Summary Judgment. After CJI's Motion for Reconsideration was denied, CJI timely filed its Notice of Appeal to this Court. Copy of the District Court's Opinion is attached hereto as Appendix A.

STATEMENT OF FACTS RELEVANT TO JURISDICTION

Fla. Stat. §713.58 is a general lien statute creating a lien in favor of persons who have performed work or services upon the personal property of another.

Although the statute does not expressly require possession of the property to assert the lien, Fla. Stat. §713.58 has been interpreted to require possession and voluntary release of the property is deemed to be a release of the statutory lien right.

Fla. Stat. §329.51 is a specific statute that creates a statutory lien right in favor of persons who perform work or render services to aircraft. Obviously noting the need for commercial aircraft to be immediately released and the inability of independent mechanics who work on aircraft parked at private and public airports to maintain “possession” of aircraft they never possessed, Fla. Stat. §329.51 provides that any lien claimed for rendering such services on an aircraft “is enforceable” if the claim of lien is recorded in the county where the work was performed within 90 days after completing the work.

The District Court of Appeal and trial court below both failed to follow the opinions of this Court with regard to statutory construction thereby expressly and directly conflicting with those opinions. The lower courts refused to give effect to CJI’s mechanic’s lien which was filed in strict compliance with the requirements of Fla. Stat. §329.51. Fla. Stat. §329.51 states in pertinent part “Any lien claimed

on an aircraft under S.329.41 or S.713.58 **is enforceable** when the lienor records a verified notice with the court...within 90 days after the time the labor, services, fuel, or material was last furnished.” As set forth in detail, the trial court’s grant of Summary Judgment and the Opinion of the Third District Court of Appeal failed to full effect to the language quoted above and, as a result, conflicts with this Court’s prior decisions regarding statutory construction.

SUMMARY OF ARGUMENT

This Court has jurisdiction pursuant to Florida Constitution Article V, Section 3(b)(3) as the opinion of the Third District Court of Appeal expressly and directly conflicts with the decisions of this Court in Jones v. State, 966 So. 2d 319 (Fla. 2007); School Board of Palm Beach County v. Survivors Charter Schools, Inc., 3 So. 3d 1220 (Fla. 2009); State v. Goode, 830 So. 2d 817 (Fla. 2002); and, Martinez v. State, 981 So. 2d 449 (Fla. 2008).

ARGUMENT

This Court has jurisdiction pursuant to Florida Constitution Article V, Section 3(b)(3) as the opinion of the Third District Court of Appeal expressly and directly conflicts with the decisions of this Court as set forth in detail below.

This case involves the interpretation and application of Fla. Stat. §329.51 regarding liens on aircraft and Florida’s general personal property lien statute, Fla.

Stat. §713.58. The Majority’s decision, as noted by the Dissent, conflicts with well settled law concerning judicial construction of statutes by ignoring the language in Fla. Stat. §329.51 which states: “If any lien claimed on an aircraft under s. 329.41 or s. 713.58 is enforceable when the lienor records a verified notice with the court... within 90 days after the time the labor, services, fuel, or material was last furnished.”

The District Court’s opinion conflicts with the following opinions and well settled rules of judicial construction from this Court: that clear statutory language (i.e. that the claim of lien “is enforceable”) is not subject to judicial interpretation, Jones v. State, 966 So. 2d 319 (Fla. 2007); that a specific statute such as s. 329.51 is determinative over a general statute such as s. 713.58, School Board of Palm Beach County v. Survivors Charter Schools, Inc., 3 So. 3d 1220 (Fla. 2009); by rendering the language “is enforceable” in Fla. Stat. §329.51 meaningless, contrary to Martinez v. State, 981 So. 2d 449 (Fla. 2008); State v. Goode, 830 So. 2d 817 (Fla. 2002); and by essentially modifying the language of §329.51 in a manner beyond its express terms by requiring possession, Holly v. Auld, 450 So. 2d 217 (Fla. 1984).

CONCLUSION

WHEREFORE, CJI respectfully submits that this Court has jurisdiction, requests this Court to accept jurisdiction and render an opinion on the merits, and such further relief as this Court deems equitable or just.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of December, 2010, to:

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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 13th day of December, 2010.

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