

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, REPLY BRIEF

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## ARGUMENT

U.S. BANK, N.A.'s Answer Brief is interesting in both what it argues and what it omits. U.S. BANK's Statement of Facts, rather than being a plain statement of the facts upon which it will support its argument instead contains a great deal of argument itself. COMMERCIAL JET, INC. will respond to the argument presented in the Answer Brief's Statement of Facts and Argument in substantially the same order presented in the Answer Brief.

### I. What U.S. BANK omitted.

The elephant in the room which U.S. BANK completely ignored is any argument concerning judicial interpretation of the Florida Statutes. The reason is simple, if U.S. BANK follows the prior Opinions of this Court in construing Florida Statutes, then U.S. BANK's argument fails, plain and simple. Instead, U.S. BANK chooses to spend most of its Answer Brief lamenting about why poor little U.S. BANK, owned by one of the largest corporations in the world, is being picked on by COMMERCIAL JET.

### II. COMMERCIAL JET properly enforces its lien interest against U.S. BANK.

Although not argued below, U.S. BANK implies that it is improperly being targeted for enforcement of COMMERCIAL JET's lien. It implies that there is some sinister underlying reason why COMMERCIAL JET would pick upon U.S.

BANK and not seek recovery against Silver Jet. This actually is a remarkable statement and innuendo by U.S. BANK. The reason it is remarkable is because U.S. BANK knows fully well why COMMERCIAL JET did not pursue Silver Jet, and that is because Silver Jet is in bankruptcy dissolution proceedings in England. These proceedings started in May of 2008 and U.S. BANK retook possession of its aircraft leased to Silver Jet shortly thereafter. As a result of U.S. BANK's innuendo that there is something unfair in COMMERCIAL JET's pursuing its rights against U.S. BANK, COMMERCIAL JET simply requests this Court take judicial notice of the bankruptcy proceedings pending in London. A recent progress report is attached as Exhibit "A" hereto.

III. COMMERCIAL JET pursues lien interest against entity benefited by its work.

When Silver Jet hired COMMERCIAL JET to perform maintenance and improvements upon the aircraft owned by U.S. BANK, COMMERCIAL JET improved the aircraft via its labor and materials and thereby increased the value of U.S. BANK's aircraft. The aircraft was redelivered to Silver Jet by COMMERCIAL JET on April 20, 2008 and then shortly thereafter U.S. BANK cancelled the lease with Silver Jet and retook possession of its aircraft, an aircraft worth more than it would have been but for COMMERCIAL JET's work and services. That made the aircraft more valuable and should have assisted U.S.

BANK in leasing or selling the aircraft thereafter. Therefore, it is clear that U.S. BANK was benefited as a result of the labors, services and materials rendered by COMMERCIAL JET to the aircraft. It is this benefit to the owner of a chattel that gives rise to artisan liens. Simply put, U.S. BANK was benefited by the work performed by COMMERCIAL JET and it is both fair and reasonable that U.S. BANK should pay for same. This is the result required by § 329.51, Fla. Stat.

Interestingly, U.S. BANK finds no fault in the lien provided to a fuel provider pursuant to § 329.40, Fla. Stat. and then enforced in accordance with § 329.51, Fla. Stat. A fuel provider fuels the aircraft and releases the aircraft and the aircraft departs. While the aircraft may be temporarily increased in value by virtue of the fuel onboard, which value dissipates as the fuel is burned during the succeeding flight. Although there is no permanent increase in the value of the aircraft to the owner thereof, Florida nonetheless provides a lien to the fuel provider for their services. U.S. BANK seems to imply that such result is fair while it is nonsensical for a maintenance provider such as COMMERCIAL JET to be able to recover for its materials and services provided to an aircraft which did in fact increase the value of the aircraft to the benefit of the owner. The dichotomy of U.S. BANK's argument cannot be logically resolved.

U.S. BANK also argues that § 329.51, Fla. Stat. was created in response to the FAA's inquiry into what was required by state law in "determining the validity of claims of lien" (Answer Brief page 14) against aircraft. That is exactly correct! § 329.51, Fla. Stat. sets forth the requirements for an enforceable lien against aircraft. § 329.01, Fla. Stat. specifies where such claims must be recorded (with the FAA). So, when asked by the FAA, the legislature responded with the exact requirements for an enforceable lien. COMMERCIAL JET exactly complied with those requirements and, therefore, COMMERCIAL JET's lien is enforceable.

#### IV. Policy concerns irrelevant.

U.S. BANK argues that policy considerations favor requiring possession and points to requirements of other states with regard to enforcement of their mechanic liens. What other states do is irrelevant when construing a Florida statute. Policy considerations are properly argued to the legislative branch to seek to create a new statute or modify an existing one. This Court is limited to enforcing the statutes a legislature has passed. It is not a function of the courts to substitute the courts' judgment for that of the legislature as to the wisdom or policy of a statute. *Tillman v. State*, 934 So.2d 1263, 1270 (Fla. 2006); *State v. Rife*, 789 So.2d 288, 292 (Fla. 2001). In that regard this Court's duty is both clear and simple. As cited in COMMERCIAL JET's Initial Brief, the only interpretation of § 329.51, Fla. Stat. is that it means what it says. Giving full effect to each and every word within the

statute, it is clear that COMMERCIAL JET has an enforceable lien against U.S. BANK because it complied with each and every requirement of the statute. Once those requirements are met, the statute clearly says that such a lien “is enforceable,” just as fuel liens are enforceable under the same basis. As this Court has previously held, unambiguous statutory language “is not subject to judicial construction, no matter how wise it may seem to alter the plain language.” *Tillman, supra*, quoting *State v. Jett*, 626 So.2d 691,693 (Fla. 1993). This Court should not accept U.S. BANK’s invitation to retreat from the clear rules of statutory construction.

This Court must keep in mind that this statute applies not only to large maintenance facilities such as COMMERCIAL JET, but also to aircraft mechanics throughout the state who go to an aircraft owner or operator’s hangar or aircraft parking space and perform services on the aircraft at such locations. Those persons are never in possession of the aircraft. § 329.51, Fla. Stat. nonetheless provides them a remedy to ensure that they are paid for the value of their labor and the increased value in the aircraft, the benefits of which flow to the aircraft owner. If U.S. BANK wishes to argue fairness, nothing can be more fair than to allow persons and entities who perform services on these highly mobile assets which may or may not ever be in the possession of the mechanic to have a remedy to



ensure that the mechanic is paid for the materials and services provided which ultimately benefits no one other than the owner of the aircraft.

### **CONCLUSION**

This case involves statutory construction. Following the rules that this Court has laid down over decades of jurisprudence regarding the interpretation and construction of statutes, the only result is to find that COMMERCIAL JET's properly recorded lien is enforceable and that it is entitled to foreclose that lien against the owner of the aircraft, U.S. BANK, N.A. Based upon the foregoing, COMMERCIAL JET, INC. respectfully requests that the decisions below be reversed and that this matter be remanded to the trial court with instructions to deny U.S. BANK's Motion for Summary Judgment, that the matter proceed to trial, and such further relief as this Court deems equitable or just.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 12<sup>th</sup> day of August, 2011 to:

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**CERTIFICATE OF COMPLIANCE**

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

Dated this 12<sup>th</sup> day of August, 2011.

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