

Third District Court of Appeal

State of Florida

Opinion filed September 25, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2212
Lower Tribunal No. 18-8051

J.V. Air Maintenance, Inc., etc.,
Appellant,

vs.

Westwind Leasing, Corporation,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Mavel Ruiz, Judge.

Goldstein & Company, and Jason Goldstein and Joshua Saval, for appellant.

Aero Law Center, and Jonathan A. Ewing, Jennifer Castro, and Nada Alfaily (Fort Lauderdale), for appellee.

Before FERNANDEZ, LOGUE, and LINDSEY, JJ.

LOGUE, J.

The appellant, J.V. Air Maintenance, Inc., seeks review of the trial court's order directing it to return an aircraft owned by Westwind Leasing Corporation to

Westwind. J.V. Air filed suit to enforce its mechanic's lien on the subject aircraft. Because J.V. Air has retained possession of the aircraft beyond the three-month period authorized by section 85.011 of the Florida Statutes, we affirm.

Facts

J.V. Air performed maintenance work on an aircraft owned by Westwind. Westwind, however, found the bill for the repairs to be “grossly exaggerated” and refused to pay. As a result, J.V. refused to return the aircraft. Instead, J.V. filed a mechanic's lien against the aircraft and filed the subject lawsuit to foreclose its liens.¹ Westwind responded by filing a motion for return of the aircraft under section 85.011, Florida Statutes (2017). In its motion, Westwind argued that section 85.011 obligated J.V. to return the aircraft to Westwind after three months; the three months had expired; and Westwind was therefore entitled to regain possession. J.V. then served Westwind's counsel a notice of non-judicial sale, indicating its intent to sell the aircraft at public auction. The court entered orders canceling J.V.'s proposed non-judicial sale and directing J.V. to return the aircraft. J.V. appealed the latter order.

Standard of Review

¹ A third party, International Flight Center, Inc., also filed a claim of lien on the aircraft and assigned its claim to J.V. Both liens were included in the foreclosure action.

We review the interpretation of a statute de novo. Kephart v. Hadi, 932 So. 2d 1086, 1089 (Fla. 2006) (“The interpretation of a statute is a purely legal matter and therefore subject to the de novo standard of review.”).

Analysis

The imposition and retention of mechanic’s liens are governed by multiple statutes. In its complaint, J.V. plead that it seeks “to foreclose a lien under sections 713.58 and 329.51.” Section 713.58 generally authorizes liens “[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.” §713.58 (1), Fla. Stat. (2017).

Section 329.51 specifically authorizes “[l]iens for labor, services, fuel or material expended upon aircraft.” It sets conditions on when a lien under section 713.58 is enforceable against an aircraft:

[a]ny lien claimed on an aircraft under . . . 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.²

² Section 329.51 was amended effective July 1, 2019, and now includes an additional sentence that was not present in the 2017 version of the statute. The newly added language reads: “The lienor is not required to possess the aircraft to perfect such lien.” This newly-added language does not impact our analysis. Ch. 2019-88, § 2, Laws of Fla.

Liens on aircraft like the one at issue are liens under part II of Chapter 713 of Florida Statutes in which the person asserting the lien is in privity with the owner. For such liens, section 85.011 of the Florida Statutes provides five methods of enforcement, including an action in chancery, an action at law, a special action at law, a summary action, and, pertinent to this matter, “retention of possession.” § 85.011, Fla. Stat. (2017).

Regarding retention of possession, section 85.011 specifically limits such retention to three months. Section 85.011 provides a lienor can enforce its lien:

(1) **RETENTION OF POSSESSION.**—By retention of possession of the property on which the lien has attached for a period of not exceeding 3 months by the person entitled to the lien, if the person was in possession at the time the lien attached.

§ 85.011 (1), Fla. Stat. (2017) (emphasis added). Under the express language of section 85.011, a lienor who is in privity with the owner of the property on which the lien has attached can retain possession of the property – but for only three months.

This three-month limitation has been consistently recognized by case law. Interpreting an earlier, similar statute, the Florida Supreme Court held the mechanic’s right to retain possession “was not the rule of the common law, but is the rule under the statute, which expressly limits the right of possession to a period not exceeding three months.” Ocala Foundry & Machine Works v. Lester, 49 Fla.

199, 206-07 (Fla. 1905). Therefore, “when possession has been held for a period of three months, the mechanic or laborer has no right under the statute to longer retain the property as against the consent of the debtor.” Id. at 207.

More recently, the Fourth District has twice held that the lienor’s right to retain possession in the face of the owner’s demand for return expires after three months. Assocs. Commercial Corp. v. Ross, 465 So. 2d 663, 664 (Fla. 4th DCA 1985); Eastern Airlines Emps. Fed. Credit Union v. Lauderdale Yacht Basin, Inc., 334 So. 2d 175 (Fla. 4th DCA 1976); See generally State v. Miller, 373 So. 2d 677, 680 (Fla. 1979) (“The lien entitles the lienholder to possession of a customer’s property for three months . . .”).

In light of the unequivocal language of the statute and the unanimous case law on point, we can only conclude that the lienor’s right to possession in the face of the property owner’s demand for return is limited to three months. Here, J.V. retained possession beyond the three-month period; upon demand of the owner, it was required to surrender possession.

J.V. argues, however, that these cases conflict with our decision in Commercial Jet, Inc. v. U.S. Bank, N.A., 45 So. 3d 887 (Fla. 3d DCA 2010). We fail to see any conflict. In Commercial Jet, the purported lienor voluntarily returned the property and then subsequently attempted to make a claim of lien. Id. at 888. Commercial Jet held that a lien could not be perfected after possession was

voluntarily relinquished. Id. The case did not interpret the three-month limitation on possession contained in section 85.011.

J.V.'s real concern is the holding of Commercial Jet will cause the loss of its lien if the property is returned under section 85.011. We do not read Commercial Jet so broadly. Commercial Jet held that a party must have possession to perfect a lien; it did not address the question of whether a perfected lien lapses when a lienor is required to return the property at the end of the three months provided in section 85.011.

The length of time the lien remains valid should not be confused with the length of time that a lienor has the right to possess the property. After all, the right to retain possession for three months is only one of the five statutory methods to enforce such liens. § 85.011, Fla. Stat.

In fact, the Supreme Court has expressly stated that the person asserting a mechanic's lien does not lose its lien when it is forced to surrender possession after three months pursuant to the statute. In Ocala Foundry, interpreting an earlier version of the three-month limitation, the Supreme Court stated: "Though the lien still exists, the right to retain possession expires, and upon demand by the debtor he has a right to have possession." Ocala Foundry, 49 Fla. at 207 (emphasis added). The Fourth District has similarly held that the lienor does not lose a perfected lien when it is forced to surrender possession under section 85.011. Assocs. Commercial Corp., 465

So. 2d at 664 (holding the right to possession expires after three months, but the lien still exists). We agree with these cases.

Admittedly, three cases suggest that the lien expires when possession is lost. Commercial Jet has a sentence to this effect.³ But the lienor in Commercial Jet lost possession of the property prior to filing a lien and therefore never perfected its lien. The continuing validity of a perfected lien after possession was lost was not an issue before the court. Commercial Jet, 45 So. 3d at 888 (“Commercial Jet never acquired a valid lien under sections 713.58 or 329.41”). Similarly, Eastern Airlines has a statement to that effect.⁴ But Eastern Airlines was subsequently expressly interpreted to hold to the contrary, namely “that a repairman’s lien rights continue beyond the

³ The sentence reads:

This lien exists only as long as the person entitled to the lien retains possession of the property upon which the lien is claimed: the statute expressly provides that “the possessory right and lien of the person performing the labor or services under this section is released, relinquished, and lost, by the removal of such property”

Commercial Jet, 45 So. 3d at 888 (quoting § 713.58(3), Fla. Stat.).

⁴ Eastern Airlines has a sentence that provides a lienor with a mechanic’s possessory lien under section 713.58:

has a lien against the property as against subsequent purchasers and creditors without notice so long as the lienor continues in possession of the property upon which the lien is claimed.

Eastern Airlines, 334 So. 2d at 177.

three-month period of possession provided for in section 713.74, Florida Statutes (1973).” Assocs. Commercial Corp., 465 So. 2d at 663. Finally, US Acquisition, LLC v. Tabas, Freedman, Soloff, Miller & Brown, P.A., 87 So. 3d 1229, 1232 (Fla. 4th DCA 2012) cites to Commercial Jet for the proposition that a lien is extinguished when the lienor relinquishes possession of the property. But US Acquisition was a case where the lien was never perfected. Id. at 1233 (“[W]e reverse the trial court’s order enforcing the charging lien which attached to the aircraft because the lien was not perfected”). Again, the issue of whether a perfected lien expires upon loss of possession was not before the court. Given these circumstances, we read the statements that the lien expires upon loss of possession as obiter dicta. By doing so, we avoid reading the cases as conflicting with the holdings to the contrary in Ocala Foundry, 49 Fla. at 207 and Associates Commercial Corporation, 465 So. 2d at 664.

Although not crucial to our ruling, we note that doing so provides both an over-arching coherence to the various mechanic’s lien statutes, including but not limited to the following:

- Under the 2017 version of section 329.51, a lienor must have possession of the property at issue to perfect a lien. See Commercial Jet, 45 So. 3d at 888 (“As Commercial Jet did not have possession of the aircraft when it attempted to claim a possessory lien under section 713.58, it cannot proceed in its attempt to foreclose on the purported lien.”).⁵
- One of the five statutory methods to enforce the lien is to retain possession for three months. § 85.011(1), Fla. Stat.

⁵ As noted in footnote 2, *supra*, this statute was amended in 2019.

- If by purported payment, the owner induces the lienor to surrender both possession and its lien, but then cancels payment, those circumstances are prima facie proof of fraudulent intent. § 713.58 (3), Fla. Stat.
- If the owner fails to seek return of the property at the end of the three-month period, the lienor may sell the property. See § 85.031(2) (“if the article is completed and not taken away, and the reasonable charges not paid, such mechanic or laborer may sell it after 3 months from the time such charges become due at public auction for cash . . .”).
- But if the owner demands possession at the end of the three months, the lienor is forced to return the property, although its lien continues. Ocala Foundry, 49 Fla. at 206-07 (holding that after a period of three months, “the mechanic or laborer has no right under the statute to longer retain the property as against the consent of the debtor. Though the lien still exists, the right to retain possession expires, and upon demand by the debtor he has a right to have possession.”).
- Moreover, additional remedies are provided to “a person entitled to a lien under part II of chapter 713.” § 85.031 (a), Fla. Stat. These include a lienor’s ability in certain circumstances to attach the property in aid of foreclosure. § 76.11, Fla. Stat. A lienor may do so if it “has reason to believe, and does believe, that . . . the property or part of it will be removed beyond the jurisdiction of the court,” § 76.07 (2), Fla. Stat., subject to bonding and potential liability for a wrongful attachment. § 76.12, Fla. Stat.

A different set of issues concern the rights of the lienor against third parties who may acquire an interest in the property without actual or constructive notice of the lien; we do not address those issues because they are not before us.

Affirmed.