

Third District Court of Appeal

State of Florida

Opinion filed April 1, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-152
Lower Tribunal No. 19-25341

Management & Consulting, Inc., et al.,
Petitioners,

vs.

Tech Electric, Inc.,
Respondents.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Alexander Bokor, Judge.

Taylor Espino Vega & Touron, PLLC, and Francisco Touron, III, Paul Washington and Vanessa A. Van Cleaf, for petitioners.

Law Office of Lowell J. Kuvin, LLC, Sundeep K. Mullick and Lowell J. Kuvin, for respondents.

Before EMAS, C.J., and SCALES and GORDO, JJ.

GORDO, J.

Management & Consulting, Inc., and Buslam Company Partners (collectively, “M&C–Buslam”) petition for writ of certiorari, seeking review of the trial court’s denial of their motion for discharge of lien under section 713.21(4), Florida Statutes. As a result of the lienor, Tech Electric, Inc.’s failure to strictly comply with the statute, we grant the petition and quash the trial court’s order.

M&C–Buslam was the general contractor on a project owned by a non-party, Nicover, LLC. Nicover and M&C–Buslam have an agreement by which M&C–Buslam is required to indemnify Nicover for any attorneys’ fees and costs incurred in litigation in connection with the subject property. M&C–Buslam hired subcontractor, Tech Electric, to perform electrical work on the project. After Tech Electric was properly terminated, it filed a lien against the project.¹ Eventually, after Tech Electric failed to take any action on the lien against Nicover’s project, M&C–Buslam filed the underlying suit, in part seeking a summons/order to show cause

¹ Tech Electric later amended its lien to increase the amount owed. According to Tech Electric, this amendment extends the time during which it could enforce its lien and makes the instant appeal futile because any order from this Court would quash only the original lien and not the amended one. We reject this argument without further discussion because it is well-settled that an amended lien relates back to the original lien and does not toll filing deadlines. See, e.g., Jack Stilson & Co. v. Caloosa Bayview Corp., 278 So. 2d 282, 283–84 (Fla. 1973) (holding that filing an amended mechanic’s lien does not toll the statutory deadlines for filing the lien or a suit thereon); Hoepner & Assocs., Inc. v. Stewart Gilman Co., 648 So. 2d 854, 855 (Fla. 5th DCA 1995) (concluding that the filing of an amended lien to increase the lien amount did not toll the time for calculating the lawsuit filing deadline).

under section 713.21, Florida Statutes.² The summons/order to show cause was served on Tech Electric on September 10, 2019.

Once the summons/order to show cause was served on Tech Electric, it had twenty days to either file an action to foreclose the lien or show cause why the lien should not be vacated or cancelled. See § 713.21(4), Florida Statutes (2019). On September 24, 2019, it filed a “Verified Response to the Order to Show Cause.” The response asserted the reasons why the lien was valid. The response failed, however, to articulate good cause as to why the action to foreclose had not yet been filed or why it required additional time to prosecute the lien. It is undisputed that Tech Electric did not file its foreclosure suit within the twenty-day statutory period.

² Section 713.21 provides, in relevant part, as follows:

Discharge of lien.—A lien properly perfected under this chapter may be discharged by any of the following methods:

...

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint therefor by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days why his or her lien should not be enforced by action or vacated and canceled of record. **Upon failure of the lienor to show cause why his or her lien should not be enforced or the lienor’s failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.**

(second emphasis added).

On October 3, 2019, M&C–Buslam filed a motion to discharge Tech Electric’s lien based on Tech Electric’s non-compliance with the requirements of subsection (4). The trial court denied the motion, finding that Tech Electric’s response showed “good cause why the lien is valid” and “at least shows or attempts to show why it should not be vacated and cancelled of record.”³

The procedures in chapter 713 were legislatively created and give materialmen, workmen and others “the special privilege of asserting a mechanic’s lien against the real property benefit.” Matrix Const. Corp. v. Mecca Const., Inc., 578 So. 2d 388, 389 (Fla. 3d DCA 1991). The statutory procedures thus require that mechanic’s liens be promptly litigated. Id. Further, the procedures are controlled by the statute, and “the statute is not subject to the ordinary exercise of judicial discretion.” Id. The statutory provisions governing mechanic’s liens must be strictly complied with and construed. See, e.g., Sturge v. LCS Dev. Corp., 643 So. 2d 53, 55 (Fla. 3d DCA 1994). “The statute provides the sole procedure available to lienors in response to an action of this nature. A lienor must strictly comply with the statutory provisions to protect its lien.” Id. (citing Goldberger v. United Plumbing & Heating, Inc., 358 So.2d 860, 863 (Fla. 4th DCA 1978)).

³ On December 16, 2019—two days before the hearing on M&C–Buslam’s motion and forty-seven days after the twenty-day deadline under section 713.21 had expired—Tech Electric filed a separate suit to foreclose its lien against Nicover.

Section 713.21(4) provides the lienor with two options following the issuance of a summons/order to show cause. Within twenty days, the lienor must either (1) demonstrate good cause why the action has not yet been filed and the lien should not be discharged, or (2) file the foreclosure action. Given that Tech Electric failed to timely file suit, the question is whether it showed good cause. It is clear from the record, that Tech Electric argued that by proving that its lien was valid, it complied with its obligations under subsection (4). The statute, however, clearly requires good cause as to why the lien has not been enforced and makes no mention of proving the lien's validity. Indeed, Section 713.21 presupposes the existence of a valid lien.

Tech Electric failed to strictly comply with the requirements of section 713.21(4), as it neither filed suit nor showed good cause as to why the lien had not yet been prosecuted in the time prescribed by the statute. Tech Electric attempts to distinguish applicable case law because in contrast to those cases, it filed a verified response to the summons/order to show cause rather than an answer to the underlying complaint. See, e.g., Dracon Constr., Inc. v. Facility Constr. Mgmt., Inc., 828 So. 2d 1069 (Fla. 4th DCA 2002). Given that its verified response failed to meet the statutory requirements, it is functionally identical to the answers filed in these cases and legally insufficient to avoid discharge of its lien.

Due to Tech Electric's failure to strictly comply with the requirements of section 713.21, its mechanic's lien must be discharged. As in Matrix Construction

and Sturge, we conclude that the remedy on plenary appeal would not be full and adequate. We grant the petition for writ of certiorari and quash the trial court's order.

Petition granted; order quashed.