Third District Court of Appeal

State of Florida

Opinion filed December 1, 2021.
Not final until disposition of timely filed motion for rehearing.

____

No. 3D20-1759
Lower Tribunal No. 18-42510

____

K.D. Construction of Florida, Inc., etc.,
Appellant,

vs.

MDM Retail, Ltd., etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Carlos Guzman, Judge.

Ferencik Libanoff Brandt Bustamante & Goldstein, P.A., and Nestor Bustamante, III, Alan C. (Peter) Brandt, Jr., and Robert E. Ferencik, Jr. (Fort Lauderdale), for appellant.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Matthew W. Buttrick and Joseph J. Onorati, for appellee MDM Retail, Ltd.

Before EMAS, LINDSEY and GORDO, JJ.

EMAS, J.

INTRODUCTION

K.D. Construction of Florida, Inc. appeals final summary judgment entered in favor of MDM Retail, Ltd. on K.D. Construction's action to foreclose its claim of lien on property owned by MDM Retail. We agree with K.D. Construction that the trial court erred as a matter of law in its interpretation of section 713.10, Florida Statutes (2013), and its application to the agreement in the instant case. We therefore reverse and remand for further proceedings consistent with this opinion.

BACKGROUND

MDM Retail is the owner of commercial property in Downtown Miami ("the Property") that houses a movie theater owned and operated by Metsquare Cinema, LLC ("Lessee"). In 2013, MDM Retail entered into a lease agreement with Lessee, which was later recorded in the County's public records. In 2017, both MDM Retail and Lessee entered into a construction agreement with a general contractor to perform construction work and make improvements to the movie theater (the "Direct Contract"). Under the terms of the Direct Contract, MDM Retail and Lessee were both identified as "Owners" of the Property and each was responsible for payments as further described in the Direct Contract and its attachments.

K.D. Construction was hired as a subcontractor to perform metal stud and drywall work, and recorded its claim of lien in the public records on April 12, 2018. K.D. asserts that, following its performance of the contracted work, a portion of the amounts it was owed remained unpaid, and, accordingly, K.D. filed suit against the general contractor and MDM Retail to foreclose its lien.

MDM Retail asserted, as an affirmative defense, that pursuant to section 713.10, the lien could not be enforced against the Property. That statute provides, in pertinent part:

> (1) Except as provided in s. 713.12, a lien under this part shall extend to, and only to, the right, title, and interest of the person who contracts for the improvement as such right, title, and interest exists at the commencement of the improvement or is thereafter acquired in the real property. When an improvement is made by a lessee in accordance with an agreement between such lessee and her or his lessor, the lien shall extend also to the interest of such lessor.
>
> (2)(a) When the lease expressly provides that the interest of the lessor shall not be subject to liens for improvements made by the lessee, the lessee shall notify the contractor making any such improvements of such provision or provisions in the lease, and the knowing or willful failure of the lessee to provide such notice to the contractor shall render the contract between the lessee and the contractor voidable at the option of the contractor.

> (b) The interest of the lessor is not subject to liens for improvements made by the lessee when:
>
> 1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or
>
> 2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:
>
> a. The name of the lessor.
>
> b. The legal description of the parcel of land to which the notice applies.
>
> c. The specific language contained in the various leases prohibiting such liability.
>
> d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

K.D. contended that section 713.10(2)(b) did not apply because MDM Retail personally contracted for the improvements, recorded the notices of commencement, and was contractually obligated to pay for the improvements. K.D. argued that, under section 713.10(1), the lien should

"extend to. . . the right, title, and interest of the person who contracts for the improvement." (Emphasis added.) As a result, K.D. concluded, the lien should extend to the Property of MDM Retail. The trial court disagreed and, following a hearing, granted summary judgment in favor of MDM Retail. This appeal followed.

ANALYSIS

Our review of the trial court's summary judgment order is de novo. Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000); W. Florida Reg'l Med. Ctr. v. See, 79 So. 3d 1 (Fla. 2012). Applying the plain and unambiguous language of the relevant statute, see Pardo v. State, 596 So. 2d 665, 667 (Fla. 1992) (noting "it is a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation"), and giving meaning, as we must, to each clause of that statutory provision, see Polite v. State, 973 So. 2d 1107 (Fla. 2007); Martinez v. Golisting.com, Inc., 233 So. 3d 1190 (Fla. 3d DCA 2017), we agree with K.D. Construction that the exception to lien liability for property owners who record a lease which prohibits such liability does not apply under the circumstances presented here.[1] See Miracle Ctr.

[1] Those circumstances include, for example:

Dev. Corp. v. M.A.D. Constr., 662 So. 2d 1288 (Fla. 3d DCA 1995); MHB Constr. Servs., LLC v. RM-NA HB Waterway Shoppes, LLC, 74 So. 3d 587 (Fla. 4th DCA 2011) (holding contractor had no right to lien property **where lessor was not a party to the construction contract**); 14th & Heinberg,

---

MDM Retail was one of the expressly named parties and signatories to the Direct Contract, and is designated (together with the Lessee, Metsquare Cinema) an "Owner" of the Property. The Direct Contract further provided:

> The Contractor acknowledges and agrees that it is performing work on behalf of two separate Owners, despite the collective reference to MDM and [Lessee] as Owner in the Contract Documents.
>
> The obligations and rights of the Owner as identified in the Contract Documents shall be exercised separately and independently by MDM and [Lessee]. Neither MDM nor [Lessee] shall have any ability or obligation to control the operations of the other entity and shall not be responsible for performing the obligations of the other entity under the contract Documents.
>
> [The Contractor] agrees and understands that it is performing separate scopes of work on behalf of MDM and [Lessee] . . . . Therefore, [the Contractor] shall only be entitled to payment from MDM for work performed on behalf of MDM and shall only be entitled to payment from [Lessee] for work performed on behalf of [Lessee]. In no event shall [the Contractor] be entitled to seek or obtain payment from [Lessee] for work performed on behalf of MDM.

LLC v. Henricksen & Co., 877 So. 2d 34, 38 (Fla. 1st DCA 2004) (noting that by filing a disclaimer pursuant to section 713.10, "a lessor essentially places any interested party on notice that its interest will not be subject to any mechanics' liens arising out of the **lessee's failure to satisfy its financial obligations** for services rendered on the leased premises") (emphasis added); Van D. Costas, Inc. v. Rosenberg, 432 So. 2d 656 (Fla. 2d DCA 1983) (affirming trial court's determination that the lien was invalid against the property owner, and noting that, while the owner participated in the preliminary meeting between the parties and occasionally visited the property during the construction, "he did nothing to hold himself out as assuming responsibility to pay for the work. A lessor does not subject his property to a mechanic's lien for work done by a contractor for the lessee merely because he knows the work is taking place and fails to take action to stop it"). See also Anderson v. Sokolik, 88 So. 2d 511, 515 (Fla. 1956) (reiterating that the predecessor statute to section 713.10 "should be liberally construed to protect laborers and materialmen" and holding: "It was designed to cut off every defense to payment and provided summary process to convert his labor or material into bread and raiment when the owner of the improve[d] lands fails to do so. No court should invoke what may be owner of the improved lands fails to do to transmute the bread and raiment of the

laborer and materialman into stones and by the same token transform it into gold for the lessors.”)

Accordingly, we reverse the final summary judgment and remand to the trial court for further proceedings consistent with this opinion.