

THE NEXT CASE ON THE DOCKET,
SPECIAL JET INC. NA DO YOU
WISH TO RESERVE ANY REBUTTAL
TIME.

>> I ASK FOR 5 MINUTES.

>> MAY IT PLEASE THE COURT.

I AM DAVID M. MCDONALD, AND
I AM LEAD COUNSEL.

WE'RE HERE TO DISCUSS THE
STATUTORY INTERPRETATION.

WE ARE DEALING WITH LIFE AND
DEATH ISSUES BUT THE CASE
MAY NOT SEEM AS SIGNIFICANT,
BUT IS VERY SIGNIFICANT TO
THE AVIATION COMMUNITY OF
THE STATE.

>> CAN I ASK YOU, AND WE'LL
ADDRESS TO BOTH SIDES,
BECAUSE IT SEEMS TO BE
ESSENTIAL TO THE RESOLUTION
OF THIS CASE.

IT SEEMS AS I READ SOME OF
THE ARGUMENTS AND I READ THE
THIRD DISTRICT'S OPINION,
THEIR INTERPRETING CHAPTER

713 AS A LIEN ONLY, OR A
LIEN ONLY AND CREATED ONLY
IF THERE IS --
I DON'T READ IT AS BEING
CREATED BY POSSESSION.
IT'S FOR PEOPLE UNDER
SERVICES FOR SUBSECTION ONE,
AND THEN THE STATUTE GOES ON
AND TALKING ABOUT OTHER
THINGS, BUT IT DOES SAY THAT
IT IS RELEASED,
RELINQUISHED, AND LOST BY
REMOVAL.
SO IT SEEMS TO ME THERE IS
TWO CONCEPTS.
THE LIEN IS CREATED BY THE
WORK REFORM.
NOT THE POSSESSION.
BUT IF YOU GIVE UP
POSSESSION, YOU LOSE YOUR
LIEN.
>> I AGREE AS TO 713, OKAY.
LET'S LOOK BACK JUST A
MOMENT, JUDGE.
IF YOU LOOK AT FLORIDA

STATUTE 185, IT DEALING WITH
POSSESSOR OF LIENS, IT DATES
BACK TO THE 1800s, 1970
COMES ALONG, WE HAVE CHAPTER
713, THE FIRST PART DEALS
WITH CONSTRUCTION LIENS AND
THE SECOND PART WITH
MISCELLANEOUS LIENS, AND IN
1970 THE LEGISLATURE CREATES
A STATUTE THAT SAYS THAT
YOU, A PERSON WHO PERFORMS
WORKER SERVICES ON THE
PERSONAL PROPERTY OF
ANOTHER, SHALL HAVE A LIEN
AGAINST THAT PERSONAL
PROPERTY.

OBVIOUSLY AWARE OF THEIR
PRIOR ENACTMENTS,, THE
LEGISLATURE IS AWARE OF
THEIR PRIOR ENACTMENTS, THE
LEGISLATURE DISCUSSES THAT
IT'S UNLAWFUL FOR YOU TO
REMOVE YOUR TOASTER FROM THE
APPLIANCE STORE AND DEFEAT
THAT LIEN, AND THEN IT GOES

ON TO DISCUSS WHAT HAPPENS
IF THAT LIEN IS BROKEN BY
FRAUD BY A BAD CHECK OR
STOPPING PAYMENT ON A CHECK.

13 YEARS LATER, THE
LEGISLATURE CREATING 329.5

--

>> CAN WE STAY WITH THE
3713.

BECAUSE YOU KNOW, WHEN I,
AND I'M NOT FAMILIAR WITH
LIEN LAW, SO I'M REALLY
RELYING ON THE STATUTE, I'M
GOING, WHERE DOES IT SAY
THIS IS A POSSESSORY --
IT ARISES ONLY IF THERE IS O
SESSION.

AND YOU HAVE TO GO TO THE
PART WHERE IT SAY THAT'S --
SAYS THAT IN INITIAL --
IT GOES TO THE THIRD
SECTION.

IT DOESN'T SPELL OUT LIKE IF
YOU WERE SPEECHING LAW
STUDENTS THIS, YOU WOULD BE

GOING --

YOU FILED THE LIEN, OR WHAT
IS THIS?

WHAT IS 713.582 OTHER THAN
WHAT YOU SAID, WHICH IS THAT
IF YOU --

IF THERE IS A LIEN YOU CAN'T
GO GET YOUR TOASTER?

AND IT'S THEN DEFEATED.

WHY DOES IT SAY THERE'S NOT
A LIEN IF YOU'RE NOT IN
POSSESSION?

>> WELL, THAT'S A GOOD
QUESTION.

>> THAT'S WHAT I'M ASKING.

I'M TRYING TO UNDERSTAND THE
STATUTE SEEMS TO SAY THE
LIEN IS CREATED BUT IF YOU
GIVE UP POSSESSION IT IS
RELEASED RELINQUISHED AND
LOST.

BUT IT APPEAR THAT'S THERE
WOULD BE A NOTICE TO PERFECT
THAT LIEN IN THE RECORDS
BEFORE YOU GIVE UP POSITION.

SO IN MY READING

RESPECTFULLY, IT DOESN'T SAY

IT'S CREATED BY POSSESSION,

IT'S CREATED BY PERFORMING

OF SERVICES.

>> AND IT IS, THAT IS WHAT

PARAGRAPH ONE SAYS.

IT DOESN'T SAY ANYTHING

ABOUT POSSESSION.

>> RIGHT.

>> BUT IT IS A STATUTORY

LIEN, AND 85 --

>> THE THIRD DISTRICT

DOESN'T EVEN MENTION 35.

>> JUDGE, IF --

YOU KNOW FOR 28 YEARS, WE IN

THE AVIATION COMMUNITY READ

329.51 TO MEAN EXACTLY WHAT

IT SAYS.

AND WHAT IT SAYS, IS THAT A

LIEN UNDER 329.51, PEOPLE

THAT PROVIDE FUEL TO

AIRCRAFT.

OR SORRY 723.58 IS

ENFORCEABLE IF YOU RECORD --

>> BUT THE QUESTION IS HOW
CAN YOU ENFORCE A LIEN THAT
HAS BEEN RELEASED OR
RELINQUISHED BY THE
SURRENDER OF POSSESSION.
THAT'S THE PROBLEM THAT I
SEE WITH YOUR POSITION.
IT'S ONE THING IF YOU HAVE
POSSESSION, AND THEN
ENFORCEMENT OF THE LIEN.
THIS SECTION, 325.41 IS
ABOUT ENFORCEMENT.

There has to be an existing lien
with respect to the notice that
is filed.

If you don't have an existing
lien, then you don't have an
existing lien, so there is
nothing to enforce and I don't
understand.

I mean you are asserting that is
the defined language but I don't
see how that is defined.

>> Your Honor, if that was all
it was attempting to accomplish,

there would be no need for it
because then the only
enforcement would be by
possession.

>> Why couldn't it be?

It says, this is my problem
because, sort of, with what
Judge Schwartz said.

At any lien claimed on an
aircraft under 329.41 which is a
lien for fuel furnished to the
aircraft, or 713.58.

We don't have a 41 or 58 because
at the time that the lien notice
was filed, they weren't in
possession of the aircraft.

But, so if the legislature meant
plainly to create a lien
freestanding from 58, all they
had to say is the person who
furnishes services to an
aircraft has a lien upon the
aircraft for any unpaid service
charges.

>> That is referred to in the

statutory title.

Liens for labor material or
services.

>> Would you agree with that,
that we have 41 and 51 right
next to each other and instead,
51 is referring to 41 and
referring to 713.58.

Well, that is the whole idea.

That statute, 51, plainly
creates an independently and
when instead what they are doing
is referring back to other
statutes.

>> I think that the lien exists
against personal property and
general under 713.58.

That is what creates the
statutory lien.

>> But again, it creates it but
then it destroys it if they are
no longer in possession.

>> Your honor what you are
forgetting about is the aircraft
is not like a toaster.

>> I'm not forgetting about it.

This is not us.

This is the Legislature and the issue here is I agree to grant jurisdiction on the basis that it looks like it is the specific statute to control over the general statute but now I read this, read this and read the briefs and look back at this, I see a statutory construction that maybe I would agree with you are maybe not, but I don't think it is a clear violation of statutory construction principles when you are looking at 41 to say 51 is in creating a lien.

If it's a question of statutory interpretation and we don't have the basis of jurisdiction to accomplish.

>> An airplane is not like a car.

You can tow it to a mechanic

shop and they fix it and they
don't give you the car until you
pay.

An airplane -- an airplane
breaks down in Houston and their
hub in Atlanta -- they will fly
their experts down to Houston to
fix it and the plane goes back
in the air again so there's no
way you can possess the
airplane.

So I can see that point but I
think what Justice Pariente is
telling you is that this is an
issue for the Legislature.

We can't fix it here that weigh.

>> I think that is what the
Legislature intended when they
wrote 329.51.

>> Why did they do 41
differently?

Why did they need 41 if they
have 51, if you are correct?

Why is the fuel different than
services?

>> I find 41 to be a remarkably interesting statute and that it grants that the airplane is filled up with fuel and it flies off in the value was gone and nonetheless it gives the fuel provider a lien against the aircraft for that fuel.

There is no betterment to the value of the aircraft.

>> But you are now making a policy statement.

It sounds like -- Justice

Labarga, I agree with you.

It sounds like this is the reasonable thing to do with aircraft, that is to make a non-accessory lean but you would agree it is not up to us to rewrite the statute so it is your remedy, really -- across the street saying hey you thought you wrote this.

You have been doing this for 20 or 30 years but you need to say

it this way.

I'm sure the aircraft industry
can get that accomplished.

>> I don't think that is
correct, Your Honor.

>> Which part is not correct?

You just said it doesn't make
sense for fuel to have a lien
for services not given.

I agree it might not make sense
but it's not absurd.

The states clearly created one
for fuel.

>> I think that they said, the
legislature created the lien
under Senate 13 for people to
provide services for personal
property.

With regard -- when that
personal property and
specifically an aircraft, that
lien is now not enforceable by
possession under 85, Chapter 85.

It is now enforceable by
recording a claim of lien in the

county where the work was done within 90 days of completing the work and then they go on to tell you the semi-colon notice part, the last sentence of 329.51 says this doesn't change the requirements to record it.

>> I'm sorry.

Your argument to me sounds like you are saying that these two statutes cannot coexist, that you cannot have a portion of 713 that says you lose it by possession when the other one, 29 is it?

That says all you have to do is filed a notice to perfect it.

But I don't see why those can't -- do you?

If you file the lien, if you had filed a lien before you gave the parts of the airplane back, what would be the situation there?

>> Well --

>> If you recorded it under

statute 29.

>> If you had recorded a lien
before possession was
relinquished, and then --

If you are going to look at
paragraphs two and three of
17.58 the aircraft is still
waived.

>> We don't have that situation
here.

It seems the argument would be
made as to how you would do it.

When you are a profession you
make sure so before his release
the person who is having it
released knows that this lien
exists.

I mean you went to your client,
went to great trouble to say you
have to keep it here for 90
days.

If you don't, we are going to
tow you someplace else and you
will have to take part in
charges.

The whole thing was about
keeping this aircraft until the
money was paid.

Someone made a conscious effort
to not go along with at the
agreement they had reached and
let it go and not having filed a
lien, and now you are saying
what is the next step --
somebody is going to buy that
aircraft and there is 90 days it
is in limbo for the aircraft and
there is nothing that anyone
would know or be put on notice
that there is a lien?

>> If you look at the prior
cases and I don't remember the
name of the case but around 1974
it was that type of case where
an aircraft was at a repair
facility and and the owner
abandoned it there.

The bank who had a security
interest in it for foreclosed
and they went to pick up their

airplane and the repair facility
said no, no, no you have to pay
me the bill and there is no
record, nothing but possession
but under Article IX of the UCC
at a superior lien then been a
recorded security interest.

So the issue about whether there
is notice is really I don't
think of great import here.

What we have and what I think
the courts did were that they
looked at the interpretation of
a general statute and made that
control over this very specific
statute.

>> But the problem is the
specific statute makes reference
to the general statute.

And essentially it effectively
incorporates and refers to what
is in the general census.

It is not one where you have got
something going on where you
have a general statute and then

the legislature comes along and adopts kind of a freestanding specific statute so you could maybe see that there was an implied repeal that would arise from that.

There is no implied repeal of this earlier statute does they refer to it and furthermore, the particular provision that they adopt is not a provision about the creation of lien, which is what the other statute is about, but the statute about the enforcement of liens, so your argument, I don't see how it stacks up.

I've helped to use up a little more of your time here.

>> One other question is that reading these two together, and even if you have a lien, could it not be read that 329.51 is modifying or limiting the 713, it says because it is

enforceable.

Doesn't say only but enforceable when a lien or lienor records to verify glean so is it creating an additional work where he meant to enforce one of these possessory liens.

>> That is obviously a requirement Your Honor.

The Fourth District that dealt with the lien was recorded in the county but not recorded with the FAA as required and it was not a valid lien.

Here commercial jet followed absolutely every requirement of the statute that provides that if you do the steps you have an enforceable lien.

Except in possession.

>> I'm not clear on this record but I think with regard to these commercial aircraft, they have to get back in the air so quickly.

They only make money in the air,
so there's this huge rush to get
them in the air.

You can't hold a 767 --

>> That is a leverage to get the
bill paid.

>> Realistically you don't even
know what the bill is at that
time.

>> How long does it take to
prepare this lien?

How long does it take to prepare
the lien?

>> Doesn't take much time to
prepare the lien Your Honor.

The problem is finding out what
the cost of those last-minute
parts where they came in just
before you finish whatever was
broken and send the airplane
back on its way.

>> What about an estimation?

>> That is not clear on this
record.

>> There ways to deal with that

like deposits, but you have used
up all but 45 seconds here so if
you would like to reserve that.

>> I would like to reserve that,
thank you.

>> Good afternoon and may it
please the court.

I am Eric Wolff counsel for the
respondent, co-counsel.

The statutory text works as the
courts questions have suggested
and in this case never gets past
the first step.

There was no lien.

>> This is the Boeing Company.

The original case against the
bank?

>> The bank is part of --
the plane is held in a trust
with the bank and the
beneficiary --

>> Okay it was Boeing, was it
Boeing's plane?

>> It is the Capital
Corporation's plane for all

practical purposes.

>> Was it their plane at the time it broke down and needed servicing by Commercial Jet?

>> It was on lease to Silver Jet.

Silver Jet was a company, or a British company.

They thought they could make money flying all business class.

>> How could a commercial jet honor what we are talking about as far as getting aircraft in the air as perfecting this lien.

What would they have had to do in this case?

>> They should have done what actually is the practice in the field.

Mr. McDonald referred to 25 years of experience.

I went out and asked the folks, how does this really work?

They said they hold the plane.

That is what they do.

>> So you read this as 329 is really just, it prevents fraudulent liens so you have to file it in the county but you still have to maintain possession.

Possession alone is insufficient.

To be enforceable you have to file that notice.

>> That's correct.

Although realistically, realistically when you hold the plane and demand your money, you are probably having to pay the money or file for bankruptcy.

>> Pay the money or file for bankruptcy.

As Mr. McDonald correctly said they want to get the plane back in service.

They are not making any money.

>> So you have a situation though where they filed a lien at the time they have

possession, that they can give
up possession and still have
filed under 329.51?

>> I think that question could
go either way on the statutory
instance and it is not presented
in this case.

I will make two points.

One is practical and the other
goes to the overarching theme
here.

The practical point is, once you
insist on possession and you see
this in the cases that get cited
in the third DCA opinion for
example.

Creston Aviation versus Textron,
the Tradewinds case.

The maintenance facilities, and
it is almost always a facility
especially if it's a big plane.

This is not some person with a
toolbox coming up to the plane.

It's a sophisticated certified
operation and they have their

own facility.

Once they insist on possession,
they are going to get paid.

If there is any money to pay
them and they are not going to
enforce through filing, letting
the plane file a lien.

That is not a route toward
getting their money and impact
of that is what the maintenance
rule comes away from following
what is being recommended that
is a disaster for them.

>> What about the fuel thing?

If it's anything it seems like
it is capable of immediately
being ascertained.

I mean we all go to gas stations
and put our credit cards in and
then we have to pay.

Why did the legislature
create --

Do we know or are we talking
about practical real-life
things?

Why does someone get a lien for gas?

>> I don't know the answer to that.

It is interesting that they have a special provision.

Maybe they had better lobbyists.

I don't know, it's certainly possible.

The reason why possession -- we know possession works very well and I have heard that from people in the industry.

The reason there aren't very many cases as people don't have to get liens because by insisting --

Usually the only cases that arise in this area are far down the chain and bankruptcy.

The trustee is trying to wrestle the plane away from someone.

>> I have a thought.

If this was freestanding, 329.51 actually might deprive

the service providers of the
best weapon they have which is
possession because it is really
saying under this interpretation
that 58 has nothing to do with
it.

The lien is under that and isn't
on the sensory lien and that
will be less powerful than
keeping the plane.

>> I think that is absolutely
right.

>> It just strikes me --

>> The fuel providers have this
lien right? -- that
realistically they are going to
demand prepayment.

There is a GEK in the third DCA.

[INAUDIBLE]

>> Mr. McDonald may know.

Actually don't know.

I do know, just be clear the
commercial jet was not the only
party that was stiffed by Silver
Jet.

Silver Jet was on a lease and it was a lot more than \$57,000 for one.

So they walked out on a number of others.

Let me put the whole scheme into some context, which in retrospect I wish I had done this in a brief.

We included a legislative analysis which speaks to it somewhat obliquely.

The FAA statute, 49UFC.4407 requires the recording and a conveyance related to an airplane title.

You have to file it in Oklahoma City in order for it to be valid.

Leading up through the 70s and early '80s there were a number of issues that were kind of percolating.

Some of them had to do with, how the state law fit into that?

State law says I have valid
Title and the fact that I was
late or didn't file with the FAA
means I don't have title and
somebody else does.

Eventually one of those cases
went to the Supreme Court.

The Supreme Court said here's
how it is going to wear.

You have to file with the FAA to
have a valid conveyance or a
valid interest in that airplane.

We will look to state law for
priority.

Just before that is when Florida
amended its statute and the FAA
was signaling this register.

Florida had its possessor liens
that didn't require any
recording.

You just hold the property and
they either pay it to the court
and get a bond and then you have
to release the property and
eventually we figure it all out

in the proceeding.

But he didn't have to record anything in Florida which meant he didn't have an instrument that you could then file in Oklahoma City with the FAA.

This provision, 329.51 brought Florida into compliance -- compliance is not the right phrase but allowed the federal system to work properly.

329.51 is an instrument you filed in a state the state court or a county in Florida and then you have to file that with the FAA and you are done.

You are protected against third parties and you were in line to get paid.

The fuel providers might have to rely on that.

They don't get prepayment but the service providers?

They are going to hold the plane.

They will seek prepayment.

They are going to hold the plane
and they are going to get paid.

That is how the system works.

It is a cash on the barrelhead
system.

It is a very volatile system and
you get your money up front.

>> We are talking about these
large jets.

We have all had delays and some
of the maintenance and usually
that is by the employees.

>> Yeah and it is relatively
minor.

You can get off the tarmac
and -- but that is not what we
are talking about here.

For example, in the Tradewinds
case it is a heavy maintenance
check.

It is going to take an extended
period of time.

>> You are complying with all of
these requirements.

>> Yeah and when it goes into
this, \$250,000.

That's a serious operation.

You get that money up front and
then the operator didn't pay it,
they held the plane.

They litigated and bankruptcy
that they could keep holding the
plane and eventually that got
sorted out in bankruptcy and of
course the bankruptcy context to
show it's a volatile industry
that goes up and down the fuel
prices and other things like
that.

The reason for this provision,
329.51 is all about sort of
harmonization with the FAA.

That is why it was passed.

>> Did 41 pass at the same time?

>> I believe it was but I'm not
certain about that.

>> Were they better lobbyists?

>> I don't know.

I have no idea.

Those four provisions fit together and as you pointed out they did not have a special provision for service providers but the service providers, they have all the leverage they need.

>> Unless you have got somebody that is really thin and then you want to help the owner get it back in the air so they can make money to pay the bill.

>> It goes both ways.

>> Although under Florida statute, 1776, they can get a bond so the operator can post a bond and then they have to lease the plane or the toaster or whatever it is.

>> Like in any other context.

>> There actually aren't that many cases that deal with 713.58 by the number of them deal with posting bonds and the release of the property.

If there are no further

questions, I will sit down.

>> Can I have his remaining nine minutes?

>> You can have the remaining 39 seconds.

[LAUGHTER]

>> A couple of things really quick.

329.51, says a person who claims a lean, we have all been talking about a valid lien but the statute, 329.51 says a person claims a lean under 713.58, and meaning for having done work.

That claim, that claim is enforceable to record in accordance with 329.

>> You are asserting that if there never was a lien, and the mere claim of a lean gives them some right to enforce it.

There has to be the underlying bases there.

>> Right, which is the performance through applying

working materials.

Another issue, and I've prefaced this primarily in aviation law.

I am aware of laws in other states as a result of that and the statute is remarkably unique.

I am not aware of any state that has the statute exactly like this.

So the council from Boeing comes and says the folks in Seattle say they never see this.

They have evidentiary issues there but in addition to that, this is a unique statute in Florida.

You must interpret the statute by its language and the language says a person claiming a lien because they perform services on an aircraft, that lien is enforceable if they recorded within the time.

There is no way to affirm the

decisions below and give full
faith and credit to every word
of 329.51.

I would ask that this court reverse
and remand this for further
action.

>> You we thank you both three
arguments.

That is the last case on our
docket today.

The court is now in recess.

>> All rise.