

Board of Contributors

# Ruling Creates Opening for Property Owners to Escape from Liens

Commentary by B. Michael Clark Jr., Daily Business Review

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Property owners in Florida are provided several options under the law to expedite or clear liens against their property's title.

They can record a notice of contest, which then gives the lienors 60 days to institute foreclosure proceedings, or they can file a 20-day summons for rule to show cause, which shortens the time in which lienors can foreclose to 20 days. Alternatively, a bond can be secured, which transfers the lien from the property to security, normally a cash or surety bond, removing the cloud of the lien from the property's title.

In the past, it was uncommon for a property owner to shorten the time period in which a lienor could foreclose while simultaneously bonding off the lien. Once the lien was transferred to a bond, there was less external pressure on an owner from the mortgage-holding bank, for instance, and the owner could simply allow the transferred lien to lay dormant until it expired after a year.

However, a recent ruling by the Second District Court of Appeal has created a potential new opening for owners to quickly wipe away the lien rights of unwary lienors.

The decision came in the case of Georgia Hiller v. Phoenix Associates of South Florida. Hiller, a homeowner, contracted Phoenix for work on her home and then allegedly failed to pay. Phoenix recorded a lien against her property, and Hiller responded by posting a transfer bond to remove the cloud of the encumbrance from the property.

Hiller proceeded to record a notice of contest under section 713.22(2), shortening the time frame for Phoenix to commence an action against the transfer bond to 60 days.

The contractor had already filed a complaint against Hiller to foreclose the lien as well as for breach of contract and unjust enrichment. However, despite having notice of the transfer and the contest, it failed to commence an action against the surety within the 60-day deadline. Instead, after the passage of more than 60 days, it filed a motion to amend its complaint to add the surety of the transfer bond to the suit.

Hiller, presuming that the transfer bond automatically extinguished after the 60 days elapsed, filed a motion for the release of the transfer bond, which was denied by the trial court and became the basis for her appeal.

## Quicker Deadline

The Second DCA reversed the lower court's decision. It found that the section of the state's lien law pertaining to lien transfers to bonds stipulates that once a lien is transferred, "an action commenced within one year after the transfer, unless otherwise shortened by operation of law, in the same county or circuit court to recover against the security shall be deemed to have been brought as of the date of filing the action to enforce the lien, and the court shall have jurisdiction over the action."

In light of the "unless otherwise shortened by operation of law" language in the statute, the unanimous decision found that the law allows the owner to shorten the time period to commence an action against the security by filing a notice of contest, as Hiller had done. Accordingly, Phoenix's failure to timely sue the surety after the transfer resulted in the extinguishment of its right to make a claim against the bond.

The court concluded that Phoenix was free to proceed on its underlying contract claims against Hiller but could not continue to encumber Hiller's real or personal property until it obtained a final judgment.

Needless to say, without its lien rights, enforcing a judgment will become more problematic for the contractor.

Lienors should be wary of the important precedent established by this opinion. In the future, even if a bond is transferred to security, a lienor must be mindful of an owner's attempt to shorten the time in which it must foreclose via a 20-day summons for rule to show cause or a notice of contest. Otherwise, lienors may jeopardize the best means by which they can secure payment.

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