BLUEPRINT

Winter 2009

A SOTO LAW GROUP PUBLICATION

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LEGAL INFORMATION FOR THE CONSTRUCTION INDUSTRY

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2008 Florida Construction Case Law Update

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McCoy v. City of Alachua, 991 So.2d 983, Fla.App. 1 Dist., 2008.

McCoy sought review of the trial court's final judgment awarding Appellee City of Alachua its costs incurred against Appellants. The appellate court reversed that portion of the judgment awarding costs for an expert witness fee because the trial court was not authorized to award costs for an expert witness who did not testify. *See* § 92.231(1)-(2), Fla. Stat. (2007) (defining an expert witness as "any witness who offers himself or herself in the trial of any action as an expert witness ... and who is permitted by the court to qualify and testify as such, upon any matter pending before any court," and authorizing fees to be taxed as costs for "[a]ny expert or skilled witness who shall have testified in any cause").

BDI Const. Co. v. Hartford Fire Ins. Co., 995 So.2d 576, Fla.App. 3 Dist., 2008.

This case was an appeal from a summary judgment entered in favor of the surety on a performance bond on the basis that the statute of limitation had expired when the appellant, BDI Construction Company, filed its third party complaint against the surety. Because the trial court was correct in finding that the cause of action accrued when the subcontractor completed its work and was paid in full for that work, the appellate court affirmed the lower courts ruling.

In a breach of contract action, the statute of limitations runs from the time of the breach, which is consistent with the policy behind the statute of limitations, which is to prevent unreasonable delay in the enforcement of legal rights and to protect against the risk of injustice.

Contractor's claim against subcontractor's surety on a performance bond accrued, and five-year limitations period began to run, when contractor accepted the work and made final payment to subcontractor, and not when the overall project was complete and accepted by the owner. West's F.S.A. §§ 95.031(1), 95.11(2)(b).

Goodall v. Whispering Woods Center, L.L.C. 990 So.2d 695, Fla.App. 4 Dist., 2008.

Assignee of purchaser of commercial real estate brought action against vendor for reformation of the purchase and sale agreement, breach of the reformed contract, rescission, and unjust enrichment, arising out of the agreement's failure to provide for the 12-foot ceilings agreed to by the parties. The circuit court granted vendor's motion to dismiss for failure to state a claim. Assignee appealed.

It is well settled law in Florida that a court of equity has the power to reform a written instrument where, due to a mutual mistake, the instrument as drawn does not accurately express the true intention or agreement of the parties to the instrument.

In reforming a written instrument, an equity court in no way alters the agreement of the parties; instead, the reformation only corrects the defective instrument so that it accurately reflects the true terms of the agreement actually reached.

The appellate court held that assignee's allegation that the failure to provide for 12-foot ceilings was a mutual mistake stated a claim for reformation; assignee's allegation that vendor's failure to provide for the 12-foot ceilings was intended to deceive and defraud purchaser stated claim for reformation; merger and integration clause in agreement did not bar claim for reformation; and issue of whether purchaser was guilty of gross negligence was one of fact.

Trintec Const., Inc. v. Countryside Village Condo. Assoc. 992 So.2d 277 Fla.App. 3 Dist., 2008.

Roofing contractor that contracted with condominium association to repair roofs on several commonly-managed condominiums was not required to join individual condominium unit owners as indispensable parties to its action to foreclose a mechanics' lien; association was the proper representative of the unit owners, and unit owners were adequately protected by their rights to intervene in the lawsuit, bond off their proportionate shares of the lien amount, or pursue remedies against the association and its officers and directors if the lien resulted from improper action or omission of the association. West's F.S.A. §§ 713.08, 718.119(3), 718.121.

J.S.L. Const. Co. v. Levy, 994 So.2d 394, Fla.App. 3 Dist., 2008.

The appellate court held that the trial court could not discharge contractor's mechanics' lien on the grounds that it was untimely filed and that the statement of account was not properly sworn, where homeowners never sought discharge on such grounds, but rather alleged only that the amount stated as due in the lien was willfully exaggerated.

Contractor that filed a mechanics' lien relating to its work constructing homeowners' residence was not obligated to provide a statement of account under oath, where there was no evidence the homeowners made a written demand for such a statement. West's F.S.A. § 713.16(3); F.S.1998, § 713.16(2).

Trytek v. Gale Industries, Inc. 2008 WL 5170586, Fla.,2008.

The Supreme Court of Florida addressed who is considered the prevailing party entitled to an award of attorney's fees in construction lien litigation. The certified question and Court's answer: Where a lienor obtains a judgment against a property owner in an action to enforce a construction lien brought pursuant to section 713.29, Florida Statutes (2005), are trial courts required to apply the "significant issues" test articulated in *Prosperi v. Code, Inc.*, 626 So.2d 1360 (Fla. 1993), in determining which party, if any, is the "prevailing party" for the purpose of awarding attorneys' fees?

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The Supreme Court of Florida held that trial courts are required to apply the "significant issues" test of Prosperi to evaluate entitlement to prevailing party attorneys" fees under section 713.29, even when the lienor obtains a judgment on the lien. We conclude that this Court has consistently approached the award of attorneys' fees in lien actions as being "tempered by equitable principles." Prosperi, 626 So.2d at 1363. In that regard, when applying Prosperi to the facts of a case, there is no mandatory requirement that the trial court determine that one party is the "prevailing party."

The rule of Prosperi is that in determining "prevailing party" under section 713.29, the trial court should look to which party prevailed on the "significant issues," Prosperi requires that the trial court's determination of a prevailing party rest on whether the party "succeed [ed] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit."

Politano v. GPA Const. Group, 2008 WL 5156611, Fla.App. 3 Dist.,2008.

The appellate court held that the trial court did not abuse its discretion in contractor's action to enforce a mechanics' lien by determining that contractor did not willfully exaggerate the lien and, thus, that the lien was not invalid, even though contractor included items in the lien that it should not have, such as overhead and profit; court determined, after observing the demeanor of contractor's testifying witness, that the items were included by mistake. West's F.S.A. § 713.31(2)(a).

Brookshire v. GP Const. of Palm Beach, Inc. 993 So.2d 179, Fla.App. 4 Dist., 2008.

Following the recording of the contractor's lien, the owners filed a complaint seeking discharge of the lien, which was served on the contractor, along with an order to show cause issued by the clerk under section 713.21(4), Florida Statutes. That subsection provides in part:

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.

Within the twenty-day period the contractor did not commence an action to enforce the lien, but rather filed a motion to compel arbitration, per the construction contract, as well as a notice of hearing on the motion to arbitrate.

The appellate court held that contractor's failure to file action or counterclaim to enforce lien within 20 days required discharge of the lien.

Phoenix Walls, Inc. v. Liberty Pasadena, LLC, 980 So.2d 1286, Fla.App. 2 Dist., 2008.

In June 2005, an Owner decided to build a condominium project known as Pasadena Point Condominiums on its property in Pinellas County, Florida. The Owner entered into a contract with a general contractor to build the project. Phoenix Walls entered into a subcontract with the general contractor to perform certain drywall and stucco work on the project. The general contractor allegedly obtained payment and performance bonds on which International Fidelity Insurance Company was the surety for the protection of the Owner.

The project experienced difficulties, and Phoenix Walls stopped work in September 2006. Phoenix Walls recorded a construction lien against the Owner's property in the amount of approximately $160,000 on September 28, 2006.

On September 29, 2006, the Owner sent a letter directly to Phoenix Walls proposing a payment schedule for Phoenix Walls to complete the drywall and stucco work. The letter appears to be an effort by the Owner to communicate directly with Phoenix Walls to convince Phoenix Walls to return to the project and complete its work. The letter does not mention the general contractor. Managers for the Owner and Phoenix Walls each signed the bottom of this letter on lines provided for their signatures. As a result of this letter, Phoenix Walls allegedly received a payment of at least $20,000 under the terms explained in the letter. It appears this letter agreement also led to Phoenix Walls releasing its September 28, 2006, claim of lien.

The problems were not resolved, however, and on October 27, 2006, Phoenix Walls filed a new claim of lien against the property in the amount of $142,297.64. This claim of lien indicated that Phoenix Walls, as lienor, furnished labor, services, or materials to the property "in accordance with a contract with [the general contractor]." Thereafter, Phoenix Walls apparently filed an amended claim of lien replacing this lien on November 7, 2006. Our record does not contain a copy of this document.

The appellate court held that the Letter agreement between subcontractor and project owner, attached to subcontractor's counterclaim, supported subcontractor's claim of a separate contract with owner, entitling it to make a claim under a construction lien directly against owner, such that trial court departed from the essential requirements of the law when it looked beyond these documents to dismiss subcontractor's claim of lien based on factual determination that the claim was subject to payment bond for contract between owner and general contractor.

If you have any questions, please feel free to contact one of our lawyers:

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