



Florida's First District Court of Appeal Weighs in on Unresolved Lender Liability Question and Statute of Limitations Issue

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For the first time a Florida appellate court has decided whether section 713.3471, Florida Statutes, provides a contractor's sole remedy against a lender that has ceased advances on a construction loan. The First District Court of Appeal took up this issue of first impression in *Jax Utilities Management, Inc. v. Hancock Bank*, No.1D14-664, 2015 WL 1809322 (Fla. 1st DCA 2015) while also addressing pertinent statute of limitations issues relating to equitable lien actions.

Jax Utilities Management, Inc. ("Jax") was a contractor for the development of a residential subdivision owned by Plummer Creek ("Plummer"). Hancock Bank ("Hancock"), as successor to Peoples First Community Bank, was the lender on the project. Plummer defaulted under the loan agreement with Hancock in June 2009, at which time Hancock notified Plummer that it would no longer advance funds under the loan agreement. Hancock filed a foreclosure suit in March 2011 and received a final judgment of foreclosure in September 2011. Thereafter, Jax filed suit against Hancock asserting equitable lien and common law claims relating to its unpaid work on the project.

The trial court granted summary judgment to Hancock on: 1) Jax's equitable lien claim because Jax did not file suit within the statute of limitations set forth in section 95.11(5)(b), Florida Statutes, and 2) Jax's common law claims of equitable lien and unjust enrichment because section 713.3471, Florida Statutes, afforded Jax's sole remedy against Hancock. The First District affirmed the trial court's ruling in favor of Hancock on both issues.

In so ruling, the court acknowledged that section 95.11(5)(b), Florida Statutes, requires that an equitable lien claim be made within one year of the final furnishing of labor or materials for the improvement of real property. It was undisputed that Jax had not brought its claim within one year of its final work on the project. However, Jax argued that the statute of limitations should begin to run from the time that Hancock filed its foreclosure action and not the date of final furnishing. The court rejected this argument due to the statute's plain language and affirmed the trial court's holding that Jax's equitable lien claim was untimely.

The court then turned to Jax's argument that it should be able to bring common law claims against Hancock despite a lender's potential liability under section 713.3471, Florida Statutes. In a precedential opinion, the court rejected Jax's argument and held that section 713.3471, Florida Statutes, replaced a contractor's common law remedies against a non-funding construction lender. The Court reasoned that the statute provides a detailed procedure for a lender to follow when it ceases funding a construction loan and imposes duties nonexistent in the common law. Importantly, the lender must provide notice to the contractor "that the lender will cease further advances pursuant to the loan." If the lender does not provide notice, the contractor is entitled to specific statutory damages for its unpaid work. The court recognized that under the common law, lenders were not required to notify contractors that advances would cease. The statute, therefore "changed the common law by imposing on lenders an affirmative duty to notify, thereby protecting contractors from continuing work on projects without notice that further funds would be advanced." As such, the court held that Jax's claims for common law equitable lien and unjust enrichment were incompatible section 713.3471, thereby limiting construction lenders' liability to statutory damages.