



The Third District Court of Appeal.

Clarifying 'Confusing' Case Law, South Florida Ruling Is Good News For Developers Working With Public Land

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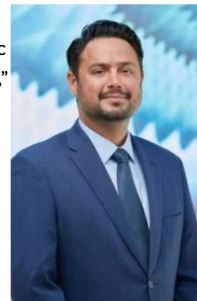
A dispute over the development and planning of a city of North Miami property is now over as the Third District Court of Appeal reinstated a lien claim, and gave clarity to what many had considered unclear case law.

The ruling is a big win for real estate developers looking to work with public entities and develop their land, as it gives landlords and developers a new understanding of lien laws by clarifying what many considered to be "confusing" case law. That's according to Chris Utrera who represented the developer in the case.

"The ruling of the court provides security of the contractors looking to secure payment at the end of the day, and it provides security to the developers who partner with public entities and not subject the land and the developer's interest in that land to those liens," Utrera said.

The property, Biscayne Landing, is at 2300 NE 151 Street in North Miami. Third DCA Judges Eric Hendon, Monica Gordo and Ivan Fernandez presided over the case.

The city leased the property in May 2012 to developer Oleta Partners LLC as a sub-landlord. In June 2015, Oleta entered into a ground sublease with Warren Henry Automobiles for a portion of the property to construct and operate a luxury auto dealership. In December 2016, Warren Henry assigned the ground sublease to a company called CARS-DB4 L.P., which conveyed a leasehold interest in the property to Warren Henry. He became a lower-tier sub-sub-tenant to CARS-DB4.



Christopher Utrera of Haber Law. Credit: Lynn Parks.

In 2017, Henry Automobiles started working with contractor James B. Pirtle Construction Co. to build the dealership, but a dispute arose between the two about payment. Pirtle filed and recorded an amended claim of lien against Warren Henry's leasehold interest for \$4.8 million.

Warren Henry Automobiles argued that the lien was invalid and not a proper lien since the land was owned by the city. According to Utrera, there can't be any lien on public land in Florida.

"The lien really didn't apply to the land, it applied to the interest of Warren Henry, which at the end of the day was a sublease. Warren Henry was leasing the land from my client, Oleta Partners, who was leasing the property from the city of Miami," Utrera said. "There was no clear direction within that statute as to how to deal with such a lien when certain precautions and steps are taken by the intermediary party, which was my client. They did what they needed to do, pursuant of the statute."

The Third DCA ruled that the language in the statute as a whole exempted the city's interest in the property from any sort of lien claim—an opinion contrary to the trial court's order.

Hendon wrote, "Pirtle's claim of lien can only be against Warren Henry Automobiles's leasehold interest, not the physical property. This is so because Warren Henry Automobiles has no ownership interest in the property. Warren Henry Automobiles leases the property as a sub-sub-lessee and only for the purpose of constructing and operating an auto dealership that will generate revenue up the lease chain."

'Now We Have Clarity'

For attorneys representing developers, Utrera suggests they tell their clients to do everything necessary by Florida lien law to protect their interest in a property.

“That’s to ensure that their interests are not capable of being subject to the liens by any contractors performing work for any of their subtenants that are going to be performing construction,” Utrera said. “Now we have clarity in the law, go take a look at the law.”

Now, the property will continue to be developed as intended.

Adam Handfinger and Stefanie Salomon of Peckar & Abramson and represented James B. Pirtle Construction Co. Inc.

Handfinger says if the law was different, contractors performing work for private entities that lease public property would not have protection for the payment of their contract balance.

” We see that frequently at airports and any sort of project where a municipality is leasing out its property for private development. These projects are usually quite large, so if the contractors don’t have any lien rights on the projects, then it would limit the ability to develop that land,” Handfinger said. ” The claim of lien was protecting and securing the right to recover that contract balance.”

It’s an important decision for both contractors and developers, Handfinger said.

“This was something that the entire industry viewed as important. I think everyone who enjoys the robust development that happens here in South Florida, whether on the development or construction side, will find this decision relevant to their business. We were very pleased with it”.

Oscar Soto and Andrew Cobbe of The Soto Law Group represented Warren Henry Automobiles. Soto says his client intends to seek further appellate review and consideration.
