

PUBLICATION UPDATE

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Florida Construction Lien Manual

Publication 80545 Release 36

September 2019

HIGHLIGHTS

This release includes statutory developments and important reported cases affecting the following chapters:

- Chapter 19—Award of Attorney’s Fees and Interest
- Chapter 19a—Award of Interest for Failure to Make Prompt Payment
- Chapter 20—Personal Money Judgments
- Chapter 21—Discharge of Liens
- Chapter 22—Foreclosure Sale
- Chapter 23—Miscellaneous Provisions
- Chapter 24—Self Help and Replevin to Recover Materials

- Chapter 25—Fraud and Collusion
- Chapter 26—Criminal Liability

Chapter 19—AWARD OF ATTORNEY’S FEES AND INTEREST

• Significant statutory developments and important reported cases have been added to Ch. 19 as part of this release. *See, e.g.*, *Marocco v. Brabec*, 2019 Fla. App. LEXIS 5348 (Fla. 1st DCA 2019) (reversing trial court’s denial of plaintiff’s motion for attorney’s fees where plaintiff successfully defended against defendants’ lien foreclosure claim and jury found defendants exaggerated the amount of their liens, but where jury also found in favor of defendants on their counterclaim for unjust enrichment; appellate court remanded case

to trial court for reconsideration of the motion, using the “significant issues” test established by the Florida Supreme Court in *Trytek v. Gale Industries* and *Prosperi v. Code, Inc.*).

Chapter 20—PERSONAL MONEY JUDGMENTS

- Significant statutory developments and important reported cases have been added to Ch. 20 as part of this release. *See, e.g.*, *Hiller v. Phoenix Assocs. of S. Fla.*, 189 So. 3d 272, 276 (Fla. 2d DCA 2016), *rev. denied*, 2016 Fla. App. LEXIS 1376 (Fla. 2016) (holding that the contractor (Phoenix Associates) was not entitled to recover against the owner (Hiller) and the surety on a FLA. STAT. § 713.24 bond due to the failure to timely respond to a FLA. STAT. § 713.21(4) order to show cause why the lien should not be cancelled).

Chapter 23—MISCELLANEOUS PROVISIONS

- Significant statutory developments and important reported cases have been added to Ch. 23 as part of this release. *See, e.g.*, *Snell v. Mott’s Contr. Servs.*, 141 So. 3d 605 (Fla. 2d DCA 2014), *rev. denied*, 153 So. 3d 907 (Fla. 2014) (the court held that when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning); *Trump Endeavor 12 LLC v. Fernich, Inc.*,

216 So. 3d 704, 707 (Fla. 3d DCA 2017) (the court recognized that the Construction Lien Law “established a statutory framework for establishment and enforcement of construction liens by subcontractors, laborers and materialmen”).

Chapter 25—FRAUD AND COLLUSION

- Significant statutory developments and important reported cases have been added to Ch. 25 as part of this release. *See, e.g.*, *Gator Boring & Trenching, Inc. v. Westra Construction, Corp.*, 210 So. 3d 175, 183 (Fla. 2d DCA 2016) (reversing trial court’s grant of summary judgment against plaintiff and holding that a factual dispute existed as to whether the subcontractor could charge (and file a claim of lien) for additional costs of unforeseen site conditions); *Farrey’s Wholesale Hardware Co. v. Coltin Elec. Servs.*, 263 So. 3d 168, 178 (Fla. 2d DCA 2018) (the Second District Court of Appeal overturned a summary judgment which found a claim of lien to be fraudulent. The *Farrey’s* court found that there was a factual dispute over good faith. It ruled that the affidavit of the lienor’s contract manager was not barred by the parol evidence rule, since it is admissible on the issues of good faith, fraud, accident or mistake. There, the lienor had contended that its lien included items found in prior purchase orders, or involved pricing changes or included prices for fixtures. In effect, the lienor contended that the ninth revised purchase order was “simply a modification of the

original agreement and did not constitute a complete and exclusive agreement between the parties.”).

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