

LAWYER

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LIENORS BEWARE: A LESSON LEARNED FROM *THE COOL GUYS, LLC*

Construction Law Section

Chairs: Jason J. Quintero - Carlton Fields, P.A.; and Jeffrey M. Paskert - Mills Paskert Divers P.A.



A recent decision by the Fourth District Court of Appeal (“DCA”) makes one area of construction lien law painfully clear and unforgiving in its application. Previously, a lienor need only initiate litigation to foreclose its lien within one year of recording its lien. Now, lienors who have timely initiated litigation to foreclose must overcome another hurdle: If the property owner posts a transfer bond, the lienor must add a claim against the transfer bond within one year of transfer.

In *The Cool Guys, LLC v. Jomar Properties, LLC*, 84 So. 3d 1076, 1078 (Fla. 4th Dist. Ct. App. 2012), Cool Guys filed a lien against Jomar Properties for an unpaid bill for air conditioning services. After Cool Guys timely initiated litigation to foreclose its lien, Jomar Properties transferred the lien to a surety bond issued by Accredited Surety. Cool Guys received notice of the transfer but did not add Accredited to the litigation for two years. The Fourth DCA held that Cool Guys’ claims against Jomar and Accredited were barred by the

one-year limitations period set forth in Florida Statute § 713.24(4).

Since 1979, the Florida Supreme Court interpreted Florida Statute § 713.24(4), Florida Statutes, such that a limitations period did not apply to lien transfer bonds that were transferred after the commencement of litigation against the property owner. *American Fire & Cas. Co. v. Davis Water & Waste Indus. Inc.*, 358 So. 2d 225 (Fla. 4th Dist. Ct. App. 1978, *aff’d*, 377 So. 2d 164 (Fla. 1979)). However, in 2005, the Florida Legislature snuffed out *American Fire* when it amended Florida Statute § 713.24(4) by adding the following:

If a proceeding to enforce a lien is commenced ... within the time specified in s. 713.22 [one year of recording of lien] and during such proceeding, the lien is transferred ... an action commenced within 1 year after the transfer, unless otherwise shortened by operation of law ... shall be deemed to have been brought as of the date of



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filing the action to enforce the lien.

Florida Statute § 713.24(4), (2005). As the *Cool Guys* court held, the new language requires lienors to bring a claim against the transferred security “within one year of the transfer,” in the event a lien is transferred to security during a pending lien foreclosure suit. *Cool Guys*, 84 So. 3d at 1078.

The *Cool Guys* decision brings clarity and certainty to this area of construction lien law. Not only must a lienor file an action to foreclose within one year of recording its lien, it must also join any surety that issues a transfer lien bond during foreclosure litigation.

Cool Guys is a wake-up call to lienors and their counsel, who must always be vigilant to enforce their rights.



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VOLUNTEERS NEEDED FOR HOLIDAYS IN JANUARY

Help make the day memorable for area foster children at this annual YLD event.
Saturday, January 12, 2013, from 10 a.m. to 2 p.m. at Grand Prix Tampa
Email Jamie Meola at jmeola@bushross.com.