

Fraudulent Liens under Florida Law

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Florida's lien law is an especially draconian area of the law. Filing a lien is an invaluable tool to help you as a contractor, sub-contractor or materialman get paid on a construction job. It can also get you into trouble unless the statute is strictly followed. Legislative amendments have softened the blow of fraudulent lien claims, but the statutes still carry heavy penalties.

Lien law in Florida is governed by Fla. Stat. § 713 while subsection 713.31 specifically deals with fraudulent liens.

What constitutes a fraudulent lien?

Fla. Stat. § 713.13(2)(a) outlines the ways that a lien can be deemed to be fraudulent. In Castiello v. Sweetwater Homes of Citrus, Inc., the court interpreted the statute as having three ways that a lien could be fraudulent:

[A] construction lien is considered to be fraudulent if the lienor **(1)** willfully exaggerates the amount of the lien claimed; or **(2)** willfully includes a claim for work not performed or materials not furnished for the property upon which the lienor seeks a lien; or **(3)** compiles the lien with such willful and gross negligence as to amount to a willful exaggeration.

843 So. 2d 1019, 1020 (Fla. Dist. Ct. App. 2003). As the first avenue requires a subjective intent element – willful – it is harder to prove and thus less commonly used.

The second covers situations where a lienor files a lien for work which is not yet performed. For example, imagine a contractor is hired to do a project for \$100,000. After the project is 50% finished, the owner terminates the contractor. The contractor could file a lien but not for the full contract price. The contractor can only lien for the amount which he actually has completed and is currently due – he cannot lien for the full contract price unless the work has been fully completed. If the owner could show that the project was not completed, he could use a fraudulent lien claim as a complete defense to the lien. See Viyella Co. v. Gomes, 657 So. 2d 83 (Fla. 3d DCA 1995).

The third avenue is through gross negligence. Though this doesn't seem to require a subjective element, it does require such gross negligence that, once again, may be hard to prove.

What remedies does the property owner have?

If a lienor files a fraudulent line, the owner has a complete defense in that the lien is fraudulent. Even if half the lien is valid, and the other half fraudulent, the defense stands against the entire lien.

It is a complete defense to any action to enforce a lien under this part, or against any lien in any action in which the validity of the lien is an issue, that the lien is a fraudulent lien; and the court so finding is empowered to and shall declare the lien unenforceable. Fla. Stat. § 713.13(2)(b)

What remedies does the lienor have?

In a 1990 amendment to subsection 713.13(2)(b), the legislature added language to provide the lienor some recourse if he filed an overstated lien. They added “[h]owever, a minor mistake or error in a claim of lien, or a good faith dispute as to the amount due does not constitute a willful exaggeration that operates to defeat an otherwise valid lien.” This was in response to Vinci Development Co. v. Connell, 509 So. 2d 1128 (Fla. 2d DCA 1987). In this case, the contractor had a good faith dispute with the owners about how much was owed. Though the court sided with the owner’s computation of the amounts owed, they held for the lienor awarding him the correct amounts due under the lien.

This paragraph shows some mercy to a lienor who makes a minor mistake in his/her lien or claims an amount in good faith. This amendment does not, however, protect the lienor if his/her lien is grossly negligent in compiling his/her lien, or the lien is willfully overstated.

What are the penalties for a fraudulent lien?

The statute carries strict penalties for a fraudulent lien.

The lienor who files a fraudulent lien shall be liable to the owner or the defrauded party in damages, which shall include court costs, clerk’s fees, a reasonable attorney’s fee for services in securing the discharge of the lien, the amount of any premium for a bond given to obtain the discharge of the lien, interest on any money deposited for the purpose of discharging the lien, and punitive damages in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due. Fla. Stat. § 713.13(2)(c).

The most important of this list of damages are the attorney’s fees and the punitive damages. Due to the attorney’s fee provision, lien actions in Florida can become more about the attorney’s fees than the lien itself. The lower court in Castiello, for example, awarded the contractor \$26,000 in attorney’s fees! After interest was applied, the Court awarded the contractor \$30,879 when the original amount owed by the owner was only \$2,476.

What can you do to protect yourself as a lienor?

If you are a lienor you can (1) educate yourself on what is and is not lienable, (2) only lien for completed work and (3) double and triple check your figures and the documentation you use to establish the amounts liened for. You may also retain an attorney to aid you in determining the appropriate method to compute the lienable amount.

Conclusion

Fraudulent liens are an area of the law that requires an extreme attention to detail. A lienor who isn't paid on a job can make things much worse if he/she files a fraudulent lien. To avoid running afoul of these harsh penalties, you must educate yourself as to what you can claim on your lien. If you are ever in doubt as to whether you may lien for some work performed, you have a fraudulent lien filed against you, or if you are defending a fraudulent lien claim, make sure you retain an attorney who understands the idiosyncrasies of Florida's lien law.

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