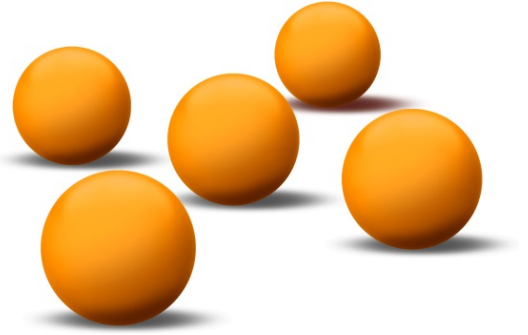


Your Venue, My Bond Claim: A Florida Law Primer

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Construction clients very often perform work in places far from either the corporate office, or far from the construction client's local office. Our clients even perform work - dare we admit - far from their attorney's office. At the same time, many construction clients want both consistency in their contracts and convenience to their local court system. For this reason, attorneys often include a "Choice of Venue" clause in the construction contract that directs any litigation or alternative dispute resolution procedures to take place in a designated venue. Usually, the chosen venue is the county in which the attorney practices or the county where the construction client has its corporate office.

Now imagine a situation in which the construction client performed work in a county or State other than the one designated as the agreed-upon Choice of Venue. In Florida, despite the negotiated and agreed contractual language, there are circumstances in which courts have directed parties to resolve their dispute in an alternate venue.

How, you might ask, can this happen? In this instance, we find the answer in Florida's lien law. Florida's lien law is found in Chapter 713, Florida Statutes. Chapter 713.24, Florida Statutes is entitled Transfer of liens to security. As one might expect, the statute allows any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed to transfer the lien from the real property to an alternate security. The statute allows transfer according to certain delineated values. The statute is neutral as to whether the transferor perfects the alternate security with a deposit in the clerk's office of the appropriate sum of money, or with the filing of a bond for the same amount in the clerk's office "executed as surety by a surety insurer licensed to do business" in Florida. A recent case study illustrates how the statutory venue and contractual venue can create confusion with litigants and with the courts.

A dispute arose regarding construction, resulting in a lien foreclosure lawsuit filed in the county in which the real property was located. The general contractor and its surety sought a transfer of venue to the county named in the contract between the general contractor and its subcontractor (the lienor). The trial court transferred the case to county named in the parties' agreement. On appeal, Florida's 4th District court reversed. The appellate court held that 713.24 Florida Statutes provides that a litigant must bring a claim on a bond in the circuit court of the county in which the security is deposited. In order to "avoid inconsistent rulings," the appellate court also transferred the contractual claims back to the original court. (See *Attaway Electric, Inc. v. Kelsey Construction, Inc. and Travelers Casualty and Surety Company of America*, Fla. 4th DCA.)

Florida courts will generally favor contractual clauses in which the contracting parties agree to a particular venue. However, Florida appellate courts are split as to the proper venue to litigate lien claims. For at least a few decades Florida's 3rd District court has mandated that despite contract clauses to the contrary, lien litigation must take place in the county in which the real property and the

security are located. Florida's 5th District court has followed that reasoning. (See *Halls Ceramic Tile v. Tiede-Zoeller Tile Corp.*) On the other hand, Florida's 1st District court has allowed the transfer to the venue to which the parties contractually agreed. (See *Waldrige Aldinger Co. v. Roberts Plumbing Contractors, Inc.*)

When dealing with complicated construction lien issues it is important to have an attorney familiar with both the law and the jurisdictional differences within a particular state. Burr & Forman LLP has nine offices throughout the Southeast with licensed construction attorneys experienced in a wide range of construction issues.

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