

Exhibit 2

March 18, 2022 Order Regarding Lien Priorities

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MMT, LLC, and The Holland Family Trust, by and through its Trustee, Mason Holland,

Plaintiffs,

vs.

Ascension Air Management, Inc., Jamail Larkins, Sutlive Aviation, LLC, Traylor and Associates, LLC, HT Eclipse, LLC, Triple Holdings, Inc., Executive Visions, Inc., CLBD Real Estate Holdings, LLC, Universal Weather and Aviation, Inc., and Universal Fuel, Inc.,

Defendants.

CLBD Real Estate Holdings, LLC

Counter and Cross Plaintiff,

vs.

MMT, LLC, and The Holland Family Trust, by and through its Trustee, Mason Holland, Ascension Air Management, Inc., Jamail Larkins, Sutlive Aviation, LLC, Traylor and Associates, LLC, HT Eclipse, LLC, Triple Holdings, Inc., Executive Visions, Inc., CLBD Real Estate Holdings, LLC, Universal Weather and Aviation, Inc., and Universal Fuel, Inc.,

Additional/New Defendants:

Ascension Aircraft, LLC, Larkins Enterprises, Inc., and Mason Holland,

Counter and Cross-Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-00825

ORDER REGARDING LIEN PRIORITIES

RECEIVED Jun 02 2022 SC Court of Appeals

THIS MATTER is before the Court on the cross-motions of The Holland Family Trust (“HFT”), CLBD Real Estate Holdings, LLC (“CLBD”), and Sutlive Aviation, LLC (“Sutlive”) for summary judgment. A hearing was held on all of the motions on November 17, 2021, and arguments were made on behalf of each of these parties by their counsel of record. The Court’s findings on the cross-motions for summary judgment, as to CLBD, are in a separate Order issued simultaneously herewith. This Order addresses the priority between Sutlive and Plaintiffs.

PROCEDURAL HISTORY

Plaintiffs HFT and MMT, LLC (“MMT”) (collectively, “Plaintiffs”) filed their Complaint on February 14, 2020 seeking quiet title to the N826ES Aircraft (“Aircraft”) and a declaratory judgment that the Plaintiffs were entitled to “consolidate” 100% of the ownership of the Aircraft into MMT, which is a separate entity also affiliated with Mason Holland (“Holland”)¹ and HFT.

Sutlive filed its Answer, Counterclaim, and Cross-Claim on May 14, 2020, then filed an Amended Answer, Counterclaim, and Cross-Claim on May 18, 2020. In its amended pleading, Sutlive sought by way of cross and counterclaim a declaratory judgment that it took an 8.33% interest in the Aircraft free and clear of all other liens and encumbrances, including those asserted by the HFT and CLBD. CLBD filed its Answer, Counterclaims, and Cross-Claims on June 26, 2020 in which it asserted claims for negligence, SCUTPA, declaratory relief, a deficiency judgment, and an injunction and restraining order.

Plaintiffs filed a motion for summary judgment on September 24, 2021 requesting that the Court find CLBD committed usury. CLBD filed its partial motion for summary judgment on September 30, 2021 requesting that the Court make findings in its favor regarding lien priority and against Plaintiffs’ usury argument. Sutlive filed a motion for summary judgment on November 5,

¹ Holland is also the Trustee of Plaintiff HFT.

2021, seeking summary judgment on its declaratory judgment counterclaim and crossclaims as to Plaintiffs and CLBD.

FINDINGS OF FACT

The Court finds that the parties generally agree on the pertinent facts. The Court recites the relevant factual matters as concisely as possible herein. Ascension Air Management, Inc. (“Ascension”)², a Georgia corporation, purchased an Eclipse aircraft on December 4, 2015. This aircraft was later designated by the Federal Aviation Administration as N826ES (the “Aircraft”). The purchase by Ascension was funded in part by a loan from CLBD for \$1,000,000, which was executed on December 3, 2015 (the “CLBD Note”). The term on the note was 30 days, and it required the payment of 5% of the principal in interest after the expiration of those 30 days. By the terms of the CLBD Note, it is governed by Georgia law. The remainder of the purchase price was funded by a loan from Eclipse Aerospace in the amount of \$2,217,436.00 (the “Eclipse Note”). The security interest of CLBD was recorded with the FAA on December 12, 2015, while Eclipse’s security interest was recorded on February 3, 2016.

The evidence submitted to the Court in support of summary judgment, including documents and deposition testimony, indicates that one of the principal shareholders of Eclipse at the time, Holland³, took an interest in the business of Ascension and spent the early months of 2016 evaluating Ascension’s financial innerworkings. Ascension was already in some financial trouble at the time, and one of the ways Holland expected Ascension to fund its business (and thus pay back its loan) was to sell fractional share interests in the Aircraft. Holland, who apparently

² There is some question whether Ascension Air Management, Inc. or Ascension Air Management, LLC actually purchased the aircraft, but the Court finds that Ascension Air Management, Inc. was the record title holder of the aircraft at all relevant times herein.

was attempting to invest or become otherwise involved in Ascension, was monitoring Ascension's financial status at all relevant times, including the ability of Ascension's principal, Jamail Larkins ("Larkins"), to sell these fractional share interests. Holland indicated in deposition testimony, that to his knowledge, it was always the intent, from the day Larkins purchased the Aircraft on behalf of Eclipse, for Larkins to sell fractional shares of the Aircraft. Sutlive was one of these fractional share interest holders, and it purchased an 8.33% interest in the Aircraft on May 3, 2016.

HFT, through Holland as its Trustee, eventually satisfied the Eclipse Note on May 16 or 17, 2016, as is evidenced by the operative documents in this matter.⁴ As the FAA record shows, a satisfaction of the Eclipse Note and release of the security interest was filed with the FAA on May 17, 2016. Holland, on behalf of HFT, thereafter took out a new security interest on the Aircraft (the "HFT Note"). Holland and HFT have claimed that the intent of their transaction with Ascension was not to take out a new security interest, but to assume Eclipse Aerospace's security position. The transaction documents, however, evidence to the contrary. In fact, those documents, as well as the information of-record with the FAA, indicate that the Eclipse Aerospace note was satisfied, and the Court finds that the plain language of those transaction documents controls. This finding is further supported by the fact that Holland's title agent told Holland, as evidenced by emails supplied to the Court for the purposes of summary judgment, that upon reviewing the FAA record of the Aircraft, the lien interest of Eclipse could not be assigned or transferred because it was previously released.

Larkins, on behalf of Ascension, either neglected his responsibility or intentionally failed to register the interests of the fractional shareholders, such as Sutlive. There were at least six

⁴ There is some confusion based on the dates in the documents as to whether the documents were executed or recorded on May 16 or May 17, but the Court finds this difference is immaterial to the matters at-issue here.

fractional shareholders. Their interests in the Aircraft were finally recorded on March 11, 2019. The documentary evidence and deposition testimony in the record shows Holland and HFT had actual notice of these interests at all relevant times. As to the interest claimed by Plaintiff MMT, it purchased an interest in the Aircraft owned by a company called Birdies Fly, one of the other fractional shareholders, on December 22, 2019. This was both purchased and recorded after the interests of the other fractional shareholders, including Sutlive.

Due to Larkins's continued failures in maintaining Ascension's business and inability to generate funding, Ascension filed a petition under Chapter 7 of the United States Bankruptcy Code on February 10, 2020. The Trustee abandoned the Aircraft upon motion by counsel for the Plaintiffs and consented to an order relieving the parties herein from the stay of this litigation on July 14, 2020.

Sutlive, CLBD, and HFT submitted competing motions for summary judgment to determine ownership and lien priority of the Aircraft, which the Court endeavors to resolve herein.

STANDARD

Pursuant to Rule 56(c), S.C.R.C.P., summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether summary judgment is appropriate, "the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 244, 711 S.E.2d 908, 910 (S.C. 2011). "The purpose of summary judgment is to expedite

disposition of cases which do not require the services of a fact finder.” *Bradley v. Doe*, 374 S.C. 622, 626, 649 S.E.2d 153, 155 (S.C. Ct. App. 2007)

CONCLUSIONS OF LAW

This matter turns on two issues. The first is lien priority, and the second is whether CLBD’s note is usurious under Georgia law. In a separate Order, this Court has determined the CLBD note is not usurious and is therefore the first priority lien. For the reasons set forth below, I find that there are no genuine issues of material fact as to the next priority lien and that Sutlive is entitled to judgment as a matter of law.

I. HFT’s Interest in the Aircraft does not encumber Sutlive’s Interest.

On the first issue of lien priority, the ruling turns on whether HFT acceded to the purchase money security interest of Eclipse.⁵ The Court finds that Holland and HFT satisfied, rather than assumed, the Eclipse Note, that no equitable doctrine under South Carolina law permits HFT to assume Eclipse’s priority position, and thus, all interests in the Aircraft that arose prior to May 16, 2016 are superior to that of the HFT as a matter of priority. This includes specifically, for the purposes of this ruling, both the CLBD and Sutlive interests.⁶

As an initial matter, to the extent the governing law of the HFT note is at-issue,⁷ the Court finds that the terms of the HFT Note are governed by South Carolina law. Lien priority in security interests is governed by S.C. Code Ann. § 30-7-10 and, for secured transactions, Article 9 of the UCC as adopted by South Carolina (S.C. Code Ann. § 36-9-322). As those Code Sections make

⁵ This despite HFT’s own transaction documents indicating that HFT only took security to 94.333% of the Aircraft rather than the full 100%, unlike Eclipse which purportedly took its security interest in 100% of the Aircraft.

⁶ This determines only the lien priority issue between these two parties and is subject to the Court’s analysis and ruling in favor of CLBD as to its first lien priority.

⁷ HFT has argued that the law of the State of New Mexico applies, but the Court finds that HFT’s arguments are reliant on the May 16, 2016 HFT Note, which by its express terms applies the law of South Carolina.

clear, liens on property are typically ordered by the date at which they are recorded or perfected. The general rule is therefore that a subsequent creditor is subordinate to the priority position of a prior owner or lienholder. *Dodge City v. Jones*, 317 S.C. 491, 494, 454 S.E.2d 918, 920 (S.C. Ct. App. 1995).

Though HFT does not set forth a clear equitable argument to step into the shoes of Eclipse, the Court will address the possible theories below.

The first is the theory of equitable subrogation. For a party to be equitably subrogated to the rights of an earlier creditor: “(1) the party claiming subrogation has paid the debt owed to the earlier creditor; (2) the party was not a volunteer but had a direct interest in the discharge of the debt or lien; (3) the party was secondarily liable for the debt or for the discharge of the lien; and (4) no injustice will be done to the other party by the allowance of the equity.” *Id.* at 494, 920. The knowledge of a pre-existing interest will be imputed to a purchaser of a security interest if he or his agents or principals knew of such a pre-existing interest. *See Crystal Ice Co. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (S.C. 1979). The South Carolina Court of Appeals has recently rejected the adoption of the related “replacement mortgage doctrine” in *ArrowPointe Fed. Credit Union v. Bailey*, 432 S.C. 373, 852 S.E.2d 473 (S.C. Ct. App. 2020).

The Court finds that, as to equitable subrogation, HFT cannot establish the requisite elements to invoke the theory of the equitable subrogation. First, neither Holland nor HFT was secondarily liable for the debt or discharge of the lien, as is required to invoke equitable subrogation. The transaction documents indicate that the Eclipse Note was completely satisfied, and the security interest was released. Holland and HFT then created an entirely new security interest, with new terms, by the execution of entirely new documents, which differed as to materials terms such as the term of the loan, the governing law of the respective notes, and the

amount of equity in the Aircraft secured by the loan. This is supported both by the transaction documents, and by the communications between Holland and his own FAA title examiner that were submitted as exhibits to the motions before this Court. At the time HFT satisfied the Eclipse Note, rather than purchasing it, HFT did not hold the note, nor was it “secondarily liable for the debt or for the discharge of the lien.” *Dodge City v. Jones*, 317 S.C. at 494, 454 S.E.2d at, 920. Thus, HFT cannot invoke the doctrine of equitable subrogation to accede to the priority position of Eclipse.

To the extent the HFT argues the doctrine of “equitable reinstatement” should apply, the Court can find no evidence of that theory having been applied by South Carolina courts, and the Court is not inclined to expand the body of South Carolina law in this realm, particularly after the Court of Appeals’s recent admonishment in *Arrowpointe* regarding the extension of equitable doctrines.

To the extent HFT claims to be a bona fide purchaser for value, it must satisfy three elements: “(1) actual payment of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase, "i.e., in good faith and with integrity of dealing, without notice of a lien or defect." *Bloody Point Prop. Owners Ass'n v. Ashton*, 410 S.C. 62, 67, 762 S.E.2d 729, 732 (S.C. Ct. App. 2014) (internal citations omitted). A bona fide purchaser must also take without actual or constructive notice of other interest, which will “prevent the plea of a bona fide purchaser.” *Epps v. McCallum Realty Co.*, 139 S.C. 481, 498, 138 S.E. 297, 302 (S.C. 1927).

Here, the title record is clear that HFT did not take its interest in the Aircraft prior to CLBD or the fractional ownership interest held by Sutlive. HFT had record notice of the CLBD lien at the very least, and it further had notice of the Sutlive interest as, by his own admission, and

supported by the documents supplied to the Court, Holland knew that Ascension was selling fractional share interests in the Aircraft in order to pay down its loans. Given this indisputable knowledge of the prior interests, Holland and HFT cannot be permitted to come to a court of equity such as this one and claim bona fide purchaser status.

On the other hand, Sutlive is a bona fide purchaser for value. Sutlive's fractional share purchase agreement, submitted to the Court with Sutlive's motion for summary judgment, represents that the 8.33% interest is conveyed "free and clear of all liens and encumbrances." No party has presented any evidence that Sutlive did not make this purchase in good faith or with notice of the other interests in the Aircraft. The fractional purchase agreement tasked Jamail Larkins and Ascension with the handling of "all records, logs, maintenance records, and other materials required by the FAA..." Sutlive was entitled to rely upon this material representation by Ascension by virtue of its fractional share purchase agreement. It is important for the Court to note that, in any event, HFT's interest in the Aircraft did not exist at the time Sutlive purchased the fractional share on May 3, 2016, and thus could not have been of record at that time, as HFT's interest was created by virtue of the satisfaction of the Eclipse Note and the execution of the HFT Note on May 16-17, 2016.

While MMT claims to have a priority position superior to that of CLBD or Sutlive, given that the MMT interest for 5.667% of the Aircraft was not purchased until December 22, 2019, well after all of the CLBD and Sutlive interests were purchased and recorded with the FAA, MMT's priority falls behind that of CLBD, Sutlive, and the HFT.

Therefore, the Court finds that Sutlive's interest in the Aircraft takes free and clear of the interests of HFT or MMT and Sutlive's interest is unencumbered by the HFT's lien.

SUMMARY

Based upon the forgoing, the Court finds as to the parties' cross-motions for summary judgment as follows:

1. CLBD's security interest in the Aircraft is the first priority lien in the Aircraft.
2. Sutlive Aviation's 8.33% ownership interest in the Aircraft is a second priority lien.
3. HFT holds a valid lien that encumbers the remainder of the Aircraft, and MMT's ownership interest is held subject to HFT's lien.

The Court therefore GRANTS Sutlive Aviation's motion for summary judgment in part.

IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Mmt Llc , plaintiff, et al VS Ascension Air Management Inc ,
defendant, et al
Case Number: 2020CP1000825
Type: Order/Summary Judgment

So Ordered

s/Mikell R. Scarborough 3062