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**The Law Office of Kevin F. Jursinski & Associates, P.A.**  
**COMMERCIAL LEASE NEWSLETTER**

**CONDITIONAL SALES AGREEMENTS, LANDLORD'S LIEN, AND UCC-1**

Due to the various issues currently affecting our real estate market, many landlords are faced with the reality of a defaulting tenant. One of the more frequent issues that has arisen is the remedies the landlord has in collection of the tenant and the enforcement the landlord has against any equipment left at the premises when the tenant vacates.

The common situation is as follows: Tenant "goes dark", involuntarily vacating the premises and leaving Landlord with a claim for damages for past due rentals due and accelerated rentals for the balance of the lease term plus interest, costs, and attorneys fees. Tenant, however, leaves equipment or personal property on the premises and Landlord wishes to maintain possession of the equipment and other personal property to offset its damages or, alternative, use as a tenant inducement when Landlord seeks to relet the premises to a third party. A problem arises when a third party vendor contacts Landlord seeking possession of the equipment on the premises, claiming they have a superior interest in the equipment.

Under Florida law, a Landlord has a statutory Landlord's Lien under Florida Statute 83.08. The statute reads:

**"Every person to whom rent may be due ... shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows: Upon all other property of the lessee or his sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased."**

A Landlord's Lien is not required to be filed or recorded in order to be perfected. The lien attaches at the commencement of the tenancy or as soon as the property is brought onto the premises. Beason-Simons v. Avion Techs., 662 So. 2d 1317 (Fla. 4th DCA 1995). Therefore, Florida's Landlord's Liens are superior to all of the right, title, and interest of a third party. However, the Landlord's Lien is not superior to a UCC-1 filing from the third party vendor, so long as the UCC-1 filing predates that of the commencement of the lease (the Landlord's Lien date).

In an increasingly common scenario, the third party vendor does not have a filed and perfected UCC-1 interest in the equipment, but rather, merely has a conditional sales agreement. A conditional sales agreement is described as “payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.” Beason-Simons v. Avion Techs., 662 So. 2d 1317 (Fla. 4th DCA 1995). In other words, the third party vendor will retain ownership of the equipment until the balance is paid in full. This “scheme” on the part of the vendor and defaulted tenant has frustrated the efforts of many landlords in these situations. Many unknowing landlords, for fear they would be interfering with the third party’s rights to the equipment, simply turn over the equipment to the vendor and forfeit their rights and interest.

As the Court observed in Fla. E. Coast Properties, Inc. v. Best Contract Furnishings, Inc., 593 So. 2d 560 (Fla. 3d DCA 1992), the seller of equipment could have protected itself by perfecting its security interest under the UCC-1 before delivery to the premises, thereby trumping any Landlord’s liens. However and unless the seller of said equipment filed a UCC-1 before the commencement date of the lease, these “conditional sales agreements” do not constitute a perfected security interest in the equipment and the Landlord’s Lien is superior.

This technicality is extremely critical to note for commercial landlords at this time. In a time where collectability of the landlord’s rental damages from tenant can be difficult, if not impossible, the ability of the landlord to seek recourse on unperfected equipment to offset the damages can be essential.

As an additional remedy, many landlords take an additional step by filing a UCC-1 against any unperfected property at the commencement of the lease to further protect their interest from any third parties. The UCC-1 interest, coupled with the statutory lien, provides the landlord an undisputed ability to proceed forward to foreclose its interest in the equipment in order to sell or lease to third party tenants.

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