

Online Reference: FLWSUPP 30021PAL

Municipal corporations -- Code enforcement -- Fine reduction -- Jurisdiction -- Special magistrate has authority to reduce code enforcement fines, but does not have authority to reduce or modify subsequent lien stemming from fine after it has been properly recorded -- Order on request for reduction of fine is vacated

PALM BEACH POLO, INC., Appellant/Cross-Appellee, v. VILLAGE OF WELLINGTON, Appellee/Cross-Appellant. Circuit Court, 15th Judicial Circuit (Appellate) in and for Palm Beach County, Division AY. Case No. 50-2020-CA-002893-XXXX-MB. April 18, 2022. On Appeal/Cross-Appeal from the Village of Wellington Special Magistrate. Counsel: Alexander L. Domb, Village of Wellington, for Appellant/Cross-Appellee. Laurie Stilwell Cohen and Rachel R. Bausch, Village of Wellington; and Elliot B. Kula and William D. Mueller, Miami, for Appellee/Cross-Appellant.

(PER CURIAM.) Appellant, Palm Beach Polo Inc. (“Polo”) filed an appeal challenging an “Order Reducing Penalty/Lien” issued after a hearing before the Village of Wellington Special Magistrate. Appellee, Village of Wellington, Florida (“Wellington”) cross-appealed, challenging the Special Magistrate's subject matter jurisdiction to hold a hearing or enter any orders. We write only to address the Special Magistrate's subject matter jurisdiction, holding that the Special Magistrate was divested of jurisdiction to consider a reduction of a fine because the fine at issue was recorded and converted into a lien. § 162.09, Fla. Stat. (2019).

Factual Background

In 2015, Wellington cited Polo for failing to comply with provisions of Wellington's Land Development Regulations concerning a cypress reserve located on Polo's property. After a hearing before a Special Magistrate, Polo was found to have violations of Wellington's Code and was ordered to correct the violations on or before November 19, 2015. Polo failed to comply by the deadline. On April 25, 2016, the Special Magistrate issued an “Order Imposing Penalty/Lien” imposing a daily fine per violation against Polo. Two days later, Wellington properly recorded the “Order Imposing Penalty/Lien” as a lien.¹

In April 2018, Polo attempted to remedy its violations by filing an action to quiet title to the property at the source of the violations. In December 2019, Polo accepted a quit claim deed that ended the quiet title action, brought Polo into compliance with the Code violations, and stopped daily fines from accruing.

Polo sought a fine reduction, and on February 20, 2020, a hearing was held before the Special Magistrate. The same day, the Special Magistrate entered the “Order Reducing Penalty/Lien” that substantially reduced the amount that Polo owed. Polo subsequently appealed the “Order on Request for Reduction of Fine.” Wellington cross-appealed.

Analysis

Jurisdictional challenges generally involve pure questions of law and are reviewable under a *de novo* standard. See *Florida A&M University Bd. of Trustees v. Bruno*, 198 So. 3d 1040, 1043 [(Fla. 1DCA 2016)] [41 Fla. L. Weekly D1886a] (reviewing issue under a *de novo* standard of review “because the question of whether a trial court has subject-matter jurisdiction is a pure question of law”).

The plain language of sections 162.09 of the Florida Statutes and 2-199(b) of Wellington's Code of Ordinances indicate that a Special Magistrate has authority to reduce fines, but not a subsequent lien stemming from the fine after it has been properly recorded. Section 162.09 details the process for enforcing administrative fines and liens in code enforcement cases. Section 162.09(3), states, in part:

A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs

of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. **A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section.**

§ 162.09, Fla. Stat. (2019) (emphasis added). It is clear from the plain language of the statute, that a certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land. When recorded, such a lien is enforceable in the same manner as a court judgment, and “runs in favor of the local governing body,” giving only the local governing body the ability to “execute a satisfaction or release of the lien.” *Id.* Importantly, section 2-199(b) of Wellington's Code of Ordinances mirrors the language of section 162.09(3).

Further, section 162.09(2)(c) states that “[a]n enforcement board may reduce a **fine** imposed pursuant to this section.” § 162.09(2)(c), Fla. Stat. (2019) (emphasis added). The plain language of the statute clearly delineates different procedures for reducing *fin*es, and for modifying *li*ens. Section 162.09(2)(c) grants authority to the Special Magistrate or enforcement board to reduce *fin*es by addressing certain statutory factors, while section 162.09(3) states that *li*ens created pursuant to this section may be modified by the local governing body. Here, the Special Magistrate was without power to modify a lien, because the statute granted this power expressly to the local governing body. *See Florida Virtual Sch. v. K12, Inc.*, 148 So. 3d 97, 99-100 (Fla. 2014) [39 Fla. L. Weekly S569a] (stating, in part, that an agency created by statute does not possess any inherent powers, rather, the agency is limited to the powers that have been granted).

No contrary authority has been presented to suggest a Special Magistrate may reduce or alter a previously recorded lien. Moreover, the Florida Attorney General has previously spoken directly on the issue of whether a code enforcement board is authorized to reduce a fine for noncompliance with an order *after* that order has been recorded pursuant to section 162.09(3). Op. Att'y Gen. Fla. 002-12 (2002).² The Attorney General determined that only the governing body may “compromise, satisfy, or release” a lien, and that although section 162.09(2) (c) empowers a special magistrate to reduce a fine, “nothing in the statute appears to extend that authority to reducing the amount of a lien created when a copy of an order imposing a fine has been recorded in the public records.” *Id.* at 3.

Based on the foregoing, conversion of the fines to a lien divested the Special Magistrate of subject matter jurisdiction because the Special Magistrate only has authority to reduce fines. Here, it is clear that on April 27, 2016, Wellington properly recorded a certified copy of the April 25, 2016 “Order Imposing Penalty/Lien,” transforming the Special Magistrate's ordered fines into liens.³ *See City of Miami Gardens v. US Bank National Association*, 298 So. 3d 1188, 1190 (Fla. 3rd DCA 2020) [45 Fla. L. Weekly D257a] (holding that electronically filed code enforcement orders were certified orders that qualified as liens against property). Under the plain language of section 162.09(3), Florida Statutes, and section 2-199 of the Wellington Code, only The Village of Wellington's village council has the authority to compromise liens after they have been recorded.

By attempting to reduce the amount of the lien, the Special Magistrate acted outside the scope of their permissible jurisdiction. *See Lamancusa v. Dep't of Revenue o/b/o Lamancusa*, 250 So. 3d 812, 814 (Fla. 5th DCA 2018) [43 Fla. L. Weekly D1504a] (defining subject matter jurisdiction as “a court's authority to hear and decide a case.”); § 162.09(3), Fla. Stat. An order entered without subject matter jurisdiction is void. *Garcia v. Stewart*, 906 So. 2d 1117, 1122 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D1322a]. If it is determined that a previously entered order is void, the court has no discretion and is obligated to vacate the order. *See State, Dept. of Transp. v. Bailey*, 603 So. 2d 1384, 1387 (Fla. 1st DCA 1992).

Accordingly, we **VACATE** the “Order Reducing Penalty/Lien” because the Special Magistrate lacked subject matter jurisdiction, and the Order is therefore **VOID**. (ROWE, KERNER, and BONAVITA, JJ., concur.)

¹ORB 28258/p 0182, Public Record of Palm Beach County, Florida.

²“Although an opinion of the Attorney General is not binding on a court, it is entitled to careful consideration and generally should be regarded as highly persuasive.” *State v. Family Bank of Hallandale*, 623 So. 2d 474, 478 (Fla. 1993).

³A certified copy of the lien was recorded in the Official Records Book 28258, Page 182, Public Records of Palm Beach County, Florida.

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