

JUL 29 1980

Mr. John Pritchard  
Attorney at Law  
Haight, Gardner, Poor & Havens  
One State Street Plaza  
New York, New York 10004

Dear Mr. Pritchard:

This is to confirm our telephone conversation of July 29, 1980.

It is our understanding that one of your corporate clients desires to obtain a dealer's aircraft registration certificate. However, it does not qualify as a citizen of the United States as the same is defined in Section 101(16) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(16)). The president and two-thirds or more of the board of directors and other managing officers are citizens of the United States or one of its possessions, but 75 per centum of its voting interest is not owned or controlled by persons who are citizens of the United States or of one of its possessions.

You proposed to satisfy the voting interest aspect through the use of a voting trust. The Federal Aviation Administration has accepted the utilization of voting trusts to allow registration of aircraft pursuant to Section 501(b)(1)(A)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1401(b)(1)(A)(1)). Accordingly, it is our opinion that your client may use a voting trust to qualify it as a citizen of the United States for the purpose of making application for a dealer's aircraft registration certificate. Of course, it will be necessary that it also meet the other requirements of Section 47.65 of the Federal Aviation Regulations (14 C.F.R. 47.65).

If there are any questions, please advise us.

Sincerely,

Original signed by  
JOSEPH T. BRENNAN

JOSEPH T. BRENNAN  
Aeronautical Center Counsel

bcc:  
AGC-7  
AGC-240  
AAC-200

JUL 30 1980

petition here but by vacating the order of the Commission. In doing so, it relies on *United States v. Munsingwear, Inc.*, 340 U.S. 36, 71 S.Ct. 104, 95 L.Ed. 36 (1950) and *Board of Regents of the University of Texas System v. New Left Education Project*, 414 U.S. 807, 94 S.Ct. 118, 38 L.Ed.2d 43 (1973). In neither of those cases was the Court faced with the contention that the trial court did not originally have jurisdiction under the case or controversy provisions of the Constitution. The only contention was that pending the appeal in each of the cases, action had been taken by the parties that mooted the case. Here, being faced with a question of original jurisdiction in this Court, we must decide that issue, before we ever face the question of mootness. Upon finding, as we do, that we do not have jurisdiction, our inquiry ends and we lack the power to vacate the order of the FCC.

The Petition is dismissed for want of jurisdiction.



In re HOLIDAY AIRLINES CORPORATION, a California Corporation (formerly doing business as Holiday Recreational Resources and Holiday Resources Corp.), Bankrupt.

Curtis B. DANNING, as Trustee in Bankruptcy of Holiday Airlines Corporation, Appellant,

v.

PACIFIC PROPELLER, INC., a Washington Corporation, Appellee.

No. 77-2400.

United States Court of Appeals, Ninth Circuit.

May 28, 1980.

Rehearing Denied June 24, 1980.

Trustee in bankruptcy brought action to determine validity of several liens con-

cerning bankrupt airline, and aircraft repair company counterclaimed asserting validity of artisans' lien against aircraft in which propeller had been reinstalled. The United States District Court for the Central District of California, Lawrence T. Lydick, District Judge, entered judgment affirming decision by bankruptcy judge that the artisans' lien was valid, and appeal was taken. The Court of Appeals, Chambers, Circuit Judge, held that: (1) where Washington was state whose law gave rise to artisans' lien against aircraft, and Washington was state where such lien attached, lien law of Washington was, under Federal Aviation Act, properly applied to test validity of such lien, and (2) artisans' lien against aircraft was enforceable in bankruptcy proceedings where the lien was filed with Federal Aviation Administration at place designated under federal rules as appropriate place for lien to be filed.

Affirmed.

1. States ↔ 4.10

Provisions of Federal Aviation Act preempt state law insofar as they relate to priority of artisans' liens on aircraft, but matters touching on validity of such liens are to be determined by underlying state law. Federal Aviation Act of 1958, § 506, 49 U.S.C.A. § 1406.

2. Bankruptcy ↔ 9

Conflicts rule in diversity of citizenship cases requiring mechanical application of conflicts law of forum state is not required in bankruptcy proceedings, at least in Federal Aviation Act cases. Federal Aviation Act of 1958, § 506, 49 U.S.C.A. § 1406.

3. Aviation ↔ 244

Artisans' liens are within ambit of Federal Aviation Act. Federal Aviation Act of 1958, §§ 503, 506, 49 U.S.C.A. §§ 1403, 1406.

4. Aviation ↔ 244

Where Washington was state whose law gave rise to artisans' lien against air-

he subdivision which  
Court said:  
ords natural sig-  
it follows that they  
ly to entertain com-  
native orders of the  
they give the Court  
nizance when proper-  
ts concerning the le-  
lered by the Commis-  
ver to relieve parties  
t from the duty of  
which are found to be  
added.]

at 765.  
ector & Gamble opin-  
an order as being in  
firmative command of

as to the want of  
ourt is well stated in  
ited States v. Alaska  
S. 113, 40 S.Ct. 448, 64

ent it might be to  
estion of the power of  
require the carriers to  
er promulgating bills of  
is not empowered to  
ns or abstract proposi-  
for the government of  
iples or rules of law  
t the result as to the  
e case before it. . ."  
[Emphasis added.]

at 449.  
question of mootness.  
pending the litigation  
ssue, once viable, no  
olution in a manner to  
We have, instead, the  
e absence of a case or  
article III.

ts that, in the event  
mine that this order is  
ould apply the moot-  
only dismissing the

the Act of June 18, 1910,  
now Section 207 of the  
h 3, 1911, 36 Stat. 1087,  
ussed).

craft, and Washington was state where such lien attached, lien law of Washington was, under Federal Aviation Act, properly applied to test validity of such lien. Federal Aviation Act of 1958, §§ 503, 506, 49 U.S.C.A. §§ 1403, 1406; RCWA 60.08.010.

#### 5. Bankruptcy ⇐192

Artisans' lien against aircraft was enforceable in bankruptcy proceedings where the lien was filed with Federal Aviation Administration at place designated under federal rules as appropriate place for lien to be filed. RCWA 60.08.010; Federal Aviation Act of 1958, § 506, 49 U.S.C.A. § 1406.

#### 6. States ⇐4.10

Federal Aviation Act recording statute, and rules implementing it, preempted filing requirements of Washington law for purposes of determining validity of artisans' lien claimed against aircraft. RCWA 60.08.010; Federal Aviation Act of 1958, §§ 503, 506, 49 U.S.C.A. §§ 1403, 1406.

#### 7. Aviation ⇐244

Neither Washington law nor Federal Aviation Act precluded Washington artisans' lien, which was filed against aircraft by repair company that had overhauled propeller assembly, from properly attaching to entire aircraft. RCWA 60.08.010; Federal Aviation Act of 1958, § 506, 49 U.S.C.A. § 1406.

Richard S. Berger, Los Angeles, Cal., for appellant.

Robert J. Adolph, Short, Cressman & Cable, Seattle, Wash., for appellee.

\* The Honorable William P. Copple, United States District Judge for the District of Arizona, sitting by designation.

1. RCW 60.08.010 does not require the lienholder to retain possession:

"Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: *Provided, however,* That no such lien shall continue, after the

Appeal from the United States District Court for the Central District of California.

Before CHAMBERS, and ELY, Circuit Judges, and COPPLE \*, District Judge.

CHAMBERS, Circuit Judge:

In January 1975, appellee Pacific Propeller, Inc. (a Washington corporation operating in Washington) shipped to California a propeller assembly that it had overhauled for Holiday Airlines (a California corporation operating in California). Simultaneously, it billed Holiday \$21,259.58 for the work that had been done and, relying on the Washington artisans' lien statute (RCW 60.08.010),<sup>1</sup> filed a "Notice of Claim of Lien—Aircraft" with the Federal Aviation Administration at its central recording office at Oklahoma City.

A month later Holiday commenced Chapter XI proceedings in the Central District of California and it was thereafter adjudicated bankrupt. The trustee brought an action to determine the validity of several liens. Pacific Propeller counterclaimed asserting the validity of its lien against the aircraft in which the propeller had been reinstalled.<sup>2</sup>

The bankruptcy judge and the district judge both concluded (though they got there by different routes) that the lien attached in Washington, that Washington's non-possessory lien law applied, and that the lien was valid under Washington law and the notice properly recorded so as to entitle it to priority under the Federal Aviation Act. The trustee argues that the aircraft was present in California at the time the bankruptcy proceedings were com-

—delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien."

2. The propeller assembly had been reinstalled in the Lockheed Electra aircraft from which it had been removed for repair. The trustee sold the aircraft under a stipulation of the parties that the proceeds would be impounded subject to the determination of the rights of the various lien claimants.

menc  
that c  
the p  
Code  
tions  
Trust  
invali  
The  
Feder  
sions  
"(a)  
shal  
the  
low

th  
ai

ec  
al  
fo  
ot  
ar  
pr

ec  
al  
fo  
ot  
ar  
pr  
or

[1]

tion A  
relate  
ties C  
F.2d 2  
Aero  
46 Cal  
ing or  
by un  
1406;

3. Sec  
Conf

int  
ate  
the  
lan  
sh  
ty

Cite as 620 F.2d 731 (1980)

menced and that the applicable lien law is that of the forum State, i. e. California. As the pertinent California statute (California Code of Civil Procedure, § 1208.61) conditions the lien on retained possession, the Trustee takes the position that the lien is invalid.

The lien was filed under terms of the Federal Aviation Act. The pertinent provisions of 49 U.S.C. § 1403(a) state:

"(a) The Secretary of Transportation shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in [certain engines and propellers]; and

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier . . ."

[1] The provisions of the Federal Aviation Act preempt State law insofar as they relate to the priority of liens. *State Securities Co. v. Aviation Enterprises, Inc.*, 355 F.2d 225 (10th Cir. 1966); *Pope v. National Aero Finance Co., Inc.*, 236 Cal.App.2d 722, 46 Cal.Rptr. 233 (1965). But matters touching on the validity of liens are determined by underlying State law. See 49 U.S.C. 1406; *State Securities Co. v. Aviation En-*

3. Section 251 of the Restatement (Second) of Conflicts (1971) states:

"(1) The validity and effect of a security interest in a chattel as between the immediate parties are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the security interest under the principles stated in § 6.

*terprises, Inc., supra; Texas National Bank of Houston v. Aufderheide*, 235 F.Supp. 599 (E.D.Ark.1964); *Aircraft Investment Corp. v. Pezzani & Reid Equipment Co.*, 205 F.Supp. 80 (E.D.Mich.1962). We thus begin with an acknowledgment that State lien law applies. The issue is which State's lien law? And to determine of that issue, we must first decide what choice of law rationale is to be employed.

The district judge, following the general rule in diversity of citizenship cases (*Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed.2d 1477 (1941)) looked to the forum State's choice of law rules in order to determine which State lien law should be applied. He concluded that under California's "governmental interest" approach, as defined in *Bernhard v. Harrah's Club*, 16 Cal.3d 313, 128 Cal.Rptr. 215, 546 P.2d 719 (1976) and *Reich v. Purcell*, 67 Cal.2d 551, 63 Cal.Rptr. 31, 432 P.2d 727 (1967), Washington's and not California's interest would be more impaired if its lien law were not applied. He then concluded that the lien was valid under Washington's non-possessory lien statute.

The bankruptcy judge had looked to the Restatement (Second) of Conflicts for its choice of law rule as to chattel liens. Section 251 of that Restatement focuses the inquiry on which State's law bears the more "significant relationship to the parties, the chattel and the security interest."<sup>3</sup> Applying this test, he also concluded that Washington lien law should be employed. In applying the Restatement's test, rather than the conflicts law of California, the bankruptcy judge had the blessing of several commentators, including Collier, who urges that bankruptcy courts should not be required to use the conflicts rule in diversity of citizenship cases but "should be free to

(2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel at the time that the security interest attached than to any other contact in determining the state of the applicable law."

exercise for itself the choice of applicable state law." 4B Collier, on Bankruptcy (14th Ed. 1976), ¶ 70.49 at 605-606.

[2] We agree with the bankruptcy judge that the rule in diversity of citizenship cases, i. e. of mechanical application of the conflicts law of the forum State, should not be required in bankruptcy proceedings, at least in Federal Aviation Act cases. The Bankruptcy Act is silent as to the appropriate choice of law when two States have competing interests. Aircraft and their appurtenances, which are subject to the Act, are mobile by nature. It is their very mobility that led to the enactment of the federal recording provisions, so that creditors and others would have one central location to refer to when they wished to search titles and other ownership interests. Otherwise, it would be necessary to search what might well be a multitude of State and County recording offices to find the information. The place where such mobile aircraft property happens to be at the time bankruptcy is commenced, should not be seen as controlling when choice of law issues are presented.

The Act itself addresses the choice of law problem in an amendment, enacted in 1964. Section 1406 of Title 49 states:

"The validity of any instrument the recording of which is provided for by section 1403 of this title shall be governed by the laws of the State, District of Columbia, or territory or possession of the United States in which such instrument is delivered, irrespective of the location or the place of delivery of the property which is the subject of such instrument. Where the place of intended delivery of such instrument is specified therein, it shall constitute presumptive evidence that such instrument was delivered at the place so specified."

*Sanders v. M. D. Aircraft Sales, Inc.*, 575 F.2d 1086 (3d Cir. 1978), considers choice of law issues in the context of a consensual finance company loan. The Third Circuit refers to the legislative history of Section 1406, and its recognition that the Federal Aviation Act as adopted in 1958 had "left

unresolved serious choice of law questions with respect to liens on chattels so mobile as aircraft." 575 F.2d at 1088. It then quotes from the legislative history of Section 1406 as contained in Senate Report 1060, 88th Cong., 2nd Sess., reprinted in U.S.Code Cong. & Admin.News, pp. 2319-2320 (1964):

"The rule would apply to all instruments subject to the recording provisions of § 503 of the Federal Aviation Act. Included would be various instruments executed for security purposes such as conveyances, leases, mortgages, equipment trusts, conditional sales contracts, etc. Assignments, amendments, and supplements to such instruments would similarly be covered. To determine the validity of such an instrument, one need only to look to the substantive law of the particular State in which the instrument was delivered."

In determining that the law of the State where the "instrument was delivered" is to apply, the Congress specifically rejected two alternative suggestions, i. e. that the jurisdiction where the property is located, or where the parties reside, be considered the jurisdiction whose law will be applied to resolve the conflicts question. In the view of the Senate Report, both alternatives would have resulted in "needless complexities and difficulties". More particularly, if the jurisdiction where the property was located were chosen, "it would be necessary to know the exact location of every aircraft at the precise moment the refinancing instrument was executed." *Sanders* views Section 1406 as a preemption by federal law and concludes that accordingly Congress "has sensibly federalized choice of law, thereby freeing aircraft financing from the forum shopping which the rule of *Klaxon Co. v. Stentor Electric Mfg. Co.* might otherwise produce." 575 F.2d at 1088.

In the words of the Senate Report, the adoption of Section 1406 "establishes a uniform Federal rule governing the validity of instruments affecting title to or interests in aircraft and related equipment" and the

provisions, instrumentations of Section 49 U.S.C.

[3] We artisans' lien the Act. S ment exc to any "ot title to, o engines, p Rules pror 19.51, refe lien, or oth ternational Century A 59 Cal.Rpt U.S. 1038, (1968); *Sm* 99 N.J.Sup cent City A Ind.App. 6

It is no operation of the part ment" tha scope of S all. The a on an F.A. was not "d party, but and filed v

[4] We sistent wit the validi tested by lien attach operation ing behin legislative aircraft o be when b largely irr

4. We are by appell applied ir law of th purtenan- ruptcy p carefully.

Cite as 620 F.2d 731 (1980)

provisions of the Section "would apply to all instruments subject to the recording provisions of Section 503 of the Federal Aviation Act [49 U.S.C. § 1403]."

[3] We cannot accept an argument that artisans' liens are not within the ambit of the Act. Section 1403 refers to any "instrument executed for security purposes" and to any "other instrument [that] affects the title to, or any interest in, any aircraft engines, propellers, or appliances . . ." Rules promulgated in 14 C.F.R. 49.41 and 19.51, refer to "Any lease, a notice of tax lien, or other lien . . ." See also *International Atlas Services, Inc. v. Twentieth Century Aircraft Co.*, 251 Cal.App.2d 434, 59 Cal.Rptr. 495 (1967), cert. denied, 389 U.S. 1038, 88 S.Ct. 775, 19 L.Ed.2d 827 (1968); *Smith v. Eastern Automotive Corp.*, 99 N.J.Super. 340, 240 A.2d 17 (1968); *Crescent City Aviation Inc. v. Beverly Bank*, 139 Ind.App. 669, 219 N.E.2d 446 (1966).

It is not clear how liens that arise by operation of law, and not by the agreement of the parties (and thus without an "instrument" that is "delivered"), fit within the scope of Section 1406, if indeed they fit at all. The artisan's lien in this case was filed on an F.A.A. form used for the purpose and was not "delivered" by one party to another party, but was completed by the lienholder and filed with the F.A.A.

[4] We conclude that it is entirely consistent with the spirit of Section 1406 that the validity of this non-consensual lien be tested by the law of the State in which the lien attached. The lien is a product of the operation of that State's law. The reasoning behind Section 1406, as explained by its legislative history, is that the place where aircraft or their appurtenances happen to be when bankruptcy is undertaken, is very largely irrelevant.<sup>4</sup>

4. We are not impressed by the authority cited by appellant for its argument that the law to be applied in this Federal Aviation Act case is the law of the State where the aircraft or its appurtenances happened to be when the bankruptcy proceedings were begun. When read carefully, the cases cited by appellant stand

The bankruptcy judge's reasoning is significantly in accord with our conclusion. He held that the lien law of Washington should apply after analyzing the facts in the light of Section 251 of the Restatement (Second) of Conflicts, i. e. its "significant relationship" test. He held that Washington lien law bore the more significant relationship to the parties, the chattel and the security interest, after noting that the airline delivered the propeller assembly to Washington, for work to be done in Washington, by a Washington corporation, with Washington employees, and with payment for the work to be made in Washington. This reasoning when reduced to its essentials implements our conclusion that as Washington was the State whose law gave rise to the lien, and was the State where the lien attached, then Washington's lien law would most properly be applied to test the validity of the lien. We find his reasoning supportive of, and consistent with, the conclusions we draw of the general statutory intent expressed by Section 1406. We thus conclude that Washington lien law applies and, under that law, the lien was entirely valid.

[5, 6] The other issues require little discussion. The trustee argues that even if Washington lien law applied (and we hold here that it did apply), the propeller company did not comply with procedural requirements and that the lien was therefore unenforceable. We disagree. The lien was filed with the F.A.A. at its facility in Oklahoma City, which is the appropriate place for it to have been filed under the federal rules. This federal recording statute, and rules implementing it, clearly preempt the filing requirements of Washington law. *McCormack v. Air Center, Inc.* (Okl.), 571 P.2d 835 (1977). The predominant purpose of the statute was to provide one central place for the filing of such liens and thus eliminate

merely for the proposition that State law and not federal common law determines the validity of liens in bankruptcy cases. See e. g. *Victor Gruen Associates, Inc. v. Glass*, 338 F.2d 826, 839 (9th Cir. 1964); *In re Knox-Powell-Stockton Co.*, 100 F.2d 979, 982 (9th Cir. 1939).

the need, given the highly mobile nature of aircraft and their appurtenances, for the examination of State and County records.

[7] Finally, the appellant contends that the lien in this case could not properly attach to the entire aircraft but only to the propeller assembly. We find no such rule under Washington law. See generally *Seaboard Securities Co. v. Berg*, 177 Wash. 203, 31 P.2d 503 (1934). Nor do we find anything in the Federal Aviation Act suggesting that an artisan's protection should be restricted because his notice describing the lien refers to the entire aircraft.

AFFIRMED.



INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE WORK-  
ERS, DISTRICT LODGE NO. 50,  
LOCAL LODGE NO. 389, Plaintiff-Appellee,

v.

SAN DIEGO MARINE CONSTRUCTION  
CORP., a California Corporation,  
Defendant-Appellant.

No. 78-2604.

United States Court of Appeals,  
Ninth Circuit.

June 4, 1980.

Employer brought suit seeking correction of an arbitration award requiring the reinstatement of a discharged employee. The United States District Court for the Southern District of California, Gordon Thompson, Jr., J., confirmed the arbitration award and employer appealed. The Court of Appeals, Nelson, Circuit Judge, held that: (1) under a collective bargaining agreement providing that the right to suspend or discharge employees for just cause

is vested exclusively in the employer, the arbitrator could determine that, although the employee's misconduct justified disciplining him, firing was too severe a sanction, and (2) the arbitrator did not impermissibly base his decision on the employer's posttermination conduct.

Affirmed.

#### 1. Federal Civil Procedure ⇐2296

Factual findings of district court, even those based on interpretation of undisputed written evidence, must stand unless clearly erroneous. Fed.Rules Civ.Proc. Rule 52(a), 28 U.S.C.A.

#### 2. Labor Relations ⇐454

Under collective bargaining agreement providing that right to suspend or discharge employees for just cause is vested exclusively in employer, arbitrator could determine that, although employee's misconduct justified disciplining him, firing was too severe a sanction.

#### 3. Labor Relations ⇐465

When two plausible interpretations of clause of collective bargaining agreement exist, arbitrator's choice of one or the other ought to be honored.

#### 4. Labor Relations ⇐462

In employer's suit seeking correction of arbitration award requiring employer to reinstate discharged employee, record established that arbitrator did not impermissibly base his decision on employer's posttermination conduct.

Kathleen M. Kelly, Littler, Mendelson, Fastiff & Tichy, San Francisco, Cal., for defendant-appellant.

Douglas F. Olins, Olins & Foerster, San Diego, Cal., for plaintiff-appellee.

Appeal from the United States District Court for the Southern District of California.

Before TU  
SON, Circuit

NELSON

This case  
rine Constr  
pany's") de  
the chief sh  
Internation  
Aerospace  
and the U  
fore an ar  
things, that  
out just ca  
although H  
plining hir  
sanction  
therefore  
without ba

The Con  
court seek  
award. T  
District C  
powers of  
labor agre  
tion of a c  
a labor or  
§ 301 of t  
Act, 29 U  
confirmed  
sis of the  
interpreta  
Company

[1] In  
two issue  
the Union  
trator au  
decision  
employee  
was just  
the arbit  
ed becau  
Heller w  
tor there  
ty? The  
ones, an  
Court, e  
tion of

\* Honc  
tion.