



U.S. Department
of Transportation

**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

July 22, 1994

Charles W. Sauter
Scope Leasing, Inc.
150 East Wilson Bridge Road
Columbus, OH 43085

Dear Mr. Sauter:

Civil Aircraft N6209V

Thank you for your letter of June 8, 1994, in which you raise concerns about the recordation of a "Mechanic Lien" dated May 20, 1993, against Civil Aircraft N6209V by Southern Cross Aviation, Inc. You were informed by the FAA Civil Aviation Registry that the lien was recorded on April 14, 1994.

For purposes of later discussion, let me state the pertinent facts.

On April 6, 1993, the Registry recorded an Aircraft Bill of Sale reflecting that Stephen J. Oberhardt sold the aircraft to Eric Weber on March 10, 1993. **(Attachment 1)** Mr. Weber was issued a Certificate of Aircraft Registration on April 6, 1993.

On May 25, 1993, Southern Cross Aviation, Inc., filed for recordation a "Mechanic's Lien" dated May 20, 1993, with the Registry. **(Attachment 2)** That lien, a copy of which is in your possession, indicated that the aircraft was registered to "E. Weber" and that services authorized by "Steve Oberhardt" were last performed on the aircraft on March 31, 1993. That lien was not accepted for recordation and was returned to Southern Cross' representative, Insured Aircraft Title Service (IATS), with a cover letter dated June 7, 1993, from an FAA Legal Instruments Examiner. **(Attachment 3)**

On July 20, 1993, the Civil Aviation Registry recorded consecutive aircraft bills of sale from Weber to Barnett Investments, Inc., to Aviation Alive, Inc., and issued a Certificate of Aircraft Registration to Aviation Alive, Inc.

On November 9, 1993, after examining the aircraft record, Aero Records & Title Co. (ARTC), sent Scope Leasing an Aircraft Title Search Report which directly quoted FAA's letter to IATS dated June 7, 1993, with respect to the Southern Cross Lien. **(Attachment 4)**

On November 18, 1993, the Civil Aircraft Registry recorded an aircraft bill of sale from Aviation Alive, Inc., to Scope Leasing, Inc; an aircraft security agreement in favor of Bank One; and an Aircraft Lease Agreement between Scope Leasing and Flyboy's Inc. The Registry issued a Certificate of Aircraft Registration to Scope Leasing on November 18, 1993.

In January 1994, IATS re-filed Southern Cross' mechanic's lien. On January 21, 1994, the FAA Legal Instruments Examiner who reviewed the re-filed lien requested advice from this office concerning the recordability of the lien, in light of the Arkansas bona fide purchaser (BFP) for value law, since the aircraft had been sold several times since the lien was first filed with the Registry in May 1993. **(Attachment 5)**

On March 17, 1994, this office responded that the Arkansas statute deals with the issue of enforceability of liens vis-a-vis BFPs, and not with the issue of recordability. Therefore, we recommended recordation. **(Attachment 6)**

As a result, the lien was recorded on April 14, 1994, and Scope Leasing was given concurrent notice thereof. **(Attachment 7)** Upon recordation, the FAA cover letter of June 7, 1993, was removed from the aircraft record.

Now, with respect to your concerns, I would first like to address your reliance on the FAA determination in 1993 that the lien not being accepted for recordation, "posed no threat to our title."

Inasmuch as ARTC specifically informed Scope Leasing on November 9, 1993 **(Reference Attachment 4)**, that FAA records reflected Southern Cross' claim of lien, I do not understand why you believed FAA's non-acceptance invalidated the lien. Southern Cross still was claiming the lien and you had actual notice of it. The FAA's determination not to record did not, by itself, have the legal effect of invalidating Southern Cross' claim. It is likely that because of its concern about the potential viability of the lien, ARTC called it to your attention in November 1993, in advance of your purchase of the aircraft from Aviation Alive, Inc.

In your letter, you allude to "an apparent change in legal policy by the FAA without publication in the Federal Register." There has been no change in legal policy. In my opinion, reconsideration of the applicability of a State lien statute with respect to the recordability of a certain lien instrument does not require notice be published in the Federal Register.

The FAA did not "unilaterally change the status of records without notice . . ." Upon refileing of the lien, we again considered recordability and, upon recording, we gave simultaneous notice thereof, to the registered owner. **(Reference Attachment 7)**

In your penultimate paragraph, you ask "how this situation developed, and why the lien was ultimately recorded." I believe I have already answered those questions. (See page 2, paragraph 3, and Reference Attachment 6)

You also ask if "there has been some fundamental policy change regarding the determination of 'ownership.'" The answer is "no." The issue of ownership was never critical to any FAA determination, and there has been no policy change regarding ownership pertinent to this discussion.

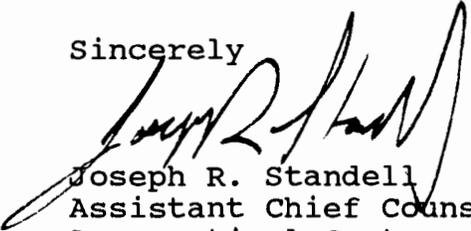
You ask if there has been a fundamental policy change as to what constitutes a "bonafide purchase"? Again, the answer is "no." Registry practice is to consider all relevant State law with respect to artisans' liens. (Reference Attachment 8) As reflected in our memo of March 17, 1994, we believe Arkansas Statute, Section 18-45-202 discusses priorities as between lienors and BFPs for value without notice. We do not believe it goes to an issue involving validity of a lien for purposes of determining recordability. (See Attachment 9, including all pertinent Arkansas Lien Statutes)

You ask that we cancel the Southern Cross lien. Based on the foregoing discussion your request is denied.

In answer to your concerns about future transactions, I hope you will agree that the Federal recordation system is substantially reliable and predictable.

I understand and appreciate your well-stated concerns. If you wish to discuss this further, please call me at (405) 954-3296.

Sincerely



Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center

Enclosures - Attachments 1 through 9

cc:
AGC-1, Mark L. Gerchick (with enclosures)

Flyboy's, Inc.
601 Red Lion Road
Philadelphia, PA 19115 (without enclosures)

LIST OF ATTACHMENTS

- 1) Aircraft Bill of Sale dated March 10, 1993, from Stephen J. Oberhardt to Eric Weber.
- 2) Southern Cross Aviation, Inc., Mechanics Lien, dated May 20, 1993
- 3) Registry letter to IATS (returning lien) dated June 7, 1993
- 4) Aero Records Aircraft Title Search Report - November 9, 1993
- 5) Registry Request to Legal dated January 21, 1994
- 6) Legal reply to Registry dated March 17, 1994
- 7) Recordation Notice dated April 14, 1994
- 8) Legal Opinion as to the Recordability of Artisans' Liens and Identification of Those States From Which Such Liens Will Be Accepted, 46 Federal Register, 61528, Thursday, December 17, 1981.
- 9) Arkansas Artisan's Lien Statutes, Arkansas Code of 1987 Annotated, Volume 18, Title 18, Chapter 45, Sections 18-45-101, et seq.