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IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,560

FLORIDA STEEL CORPORATION,

Petitioner,

v.

ADAPTABLE DEVELOPMENTS,
etc., and others,

Respondents.
_______________________________/

Review of Opinion of the District Court of Appeal,
Fourth District, Certifying a Question of Great
Public Importance

Case No. 84-448

PETITIONER'S REPLY BRIEF

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PREFACE

In this reply brief, as in the initial brief, Florida Steel Corporation, the petitioner, will be referred to alternately as "Florida Steel" or as "petitioner." King's Point Development Group will be referred to as "King's Point," "the owner," or "respondent." All persons not parties to this appeal will be referred to by name.

Throughout this brief, the symbol "R" will stand for the Record on Appeal, and the symbol "A" will stand for the Appendix, separated from the initial brief by a tab. The Appendix to this reply brief will be identified by the symbol "A2."

All references to statutes in Chapter 713, unless specified otherwise, will refer to §713.xx, Fla. Stat. (1981), and will be abbreviated by referring to the section number only.

All emphasis in quotations or elsewhere is that of counsel, unless otherwise indicated.

ARGUMENT

TO DETERMINE WHETHER ALTON TOWERS APPLIES TO ABANDONMENT CASES, ONE MUST LOOK TO THE LAW FROM WHICH THAT HOLDING EMANATED. KING'S POINT IMPROPERLY ARGUES THAT THE RESULT IS THE LAW. KING'S POINT'S ABILITY TO SUBTRACT THE COST TO COMPLETE IS THE DETERMINATIVE ISSUE IN THIS CASE. IF IT HAS NOT COMPLIED WITH THE MECHANIC'S LIEN LAW, IT CANNOT SUBTRACT THOSE COSTS. SINCE IT HAS NOT COMPLIED, THIS IS A PRIORITY DISPUTE.

King's Point seeks to conclude that completion costs in all cases are deductible from the original contract price. Its arguments, however, ignore the statutes, and "create" law for support. It ignores the legislative definition of "lienor", substituting what it wishes; it confuses "lien" with "perfected lien", and it throws out the statute on priorities and relation back. Most of all, it forgets that to qualify for Bryan/Alton protection, it must completely follow the mechanic's lien law. King's Point fails to recognize that Alton Towers is not a judicially created doctrine; it is an interpretation and application of one section of the Florida mechanic's lien law, §713.06(1), Fla. Stat. (1971), to a particular set of facts. King's Point looks to Alton Towers as if it is the source of the law, rather than an interpretation of it, and attempts to extrapolate from that opinion results which it wishes chapter 713 provided. Example: answer brief, page 22:

> Unfortunately for Florida Steel, there are no "Phase II" lien claimants in this case. Kings Point paid Rogers & Ford in accordance with their contract. Rogers & Ford paid its materialmen and laborers.... What Florida Steel fails to realize is that the senior priority of its lien did not affect Kings Point's right -- and obligation -- to pay Rogers & Ford for its work.

Section 713.01(10) does not require one to record a lien to become a lienor. The term "lienor" as used in the mechanic's lien law, is different from the use in common parlance. A lienor is almost anyone who works on a

jobsite or delivers material to one. "Lienor" is not a dirty word, yet the answer brief squirms to disassociate persons who worked on the recommenced portion from that statutory term, because if payments made were to "lienors", the law then puts those persons into the statutory rules of priority, which were not applied in Alton Towers, because they were not applicable there. That puts the onus on King's Point to extricate itself from the cessation/recommencement rule of §713.07(4).

King's Point's payments to Rogers & Ford and its materialmen and laborers, were clearly payments to "lienors". King's Point's argument has been unsuccessfully made many times before, recently by the losing appellee in American Diversified Dredging v. Nautilus Construction Corporation, 457 So.2d 597 (Fla. 2d DCA 1984).

> Appellee never filed a claim of lien. It asserts that attorney's fees are available only when the interpleader involves a "dispute between lienors," a lienor being one who has filed a claim of lien. Appellee ignores the statutory definition of lienor which includes one who "has a lien or prospective lien . . . ." §713.01(10), Fla. Stat. (1983). [emphasis in the original]
>
> 457 So. 2d at 598.

Moreover, King's Point's payments to the laborers, subcontractors and materialmen on the recommenced portion, were on account of liens which they had. Again, there is a distinction between the statutory term "lien", and the definition King's Point assigns from common parlance. Under §713.06, laborers, subcontractors and materialmen to Rogers & Ford on the recommenced portion need not record their claims of lien to have a lien. One must record to perfect such liens against others, but not to have it.

Compare liens under §§713.03, .04 and .05, which are not acquired until recording, with liens under F.S. §713.06, where recording is not

required -- the lien arises by virtue of being a "lienor" §713.01(10), and by having money due for having performed work or provided materials. Cf. Cleveland Trust Company v. Ousley Sod Company, 351 So.2d 58 (Fla. 4th DCA 1977). Section 713.06 liens specifically "attach and take priority as of the time of recordation of the notice of commencement." §713.07(2). Thus, Rogers & Ford's laborers, subcontractors, etc. had liens which attached and took priority as of the January, 1982 new notice of commencement. The holding in Alton Towers, because there was no cessation of work in that case, and therefore no new (later) notice of commencement (see fn. 2, ante), does not lend any support to King's Point's naked assertions quoted at page 1, supra.

Legislative Intent in Construction Cessation Cases - §713.07(4)

The legislature has classified all recommencement workers as lienors; payments to the §713.06 lienors are payments on January, 1982 liens. The certified question ultimately seeks the priorities of these January, 1982 (i.e. Phase II) lienors vis a vis Fall of 1980 (i.e. Phase I) lienors, such as Florida Steel; in other words, may payments to Phase II lienors (the costs of completion) be deducted from the contract balance, before paying Phase I lienors, as in Alton Towers?

Under §713.07(4), which section is generally entitled "Priority of Liens," "[i]f construction ceases before completion," (which completely distinguishes the case at bar from Alton Towers), owners:

> (a) may either pay all [Phase I] lienors in full or pro rata prior to recommencement in order for subsequent [i.e. Phase II] liens to take priority, or
>
> (b) file an affidavit of intent to recommence construction[1], in which event 30 days after the

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[1]As will be seen, the statute does not require payment to Phase I lienors here. If the affidavit is filed identifying which Phase I lienors have not been filed, the right to contest the lien is preserved.

recording of same, "the rights of any person acquiring any ... lien, [Rogers & Ford's subcontractors, etc.] ... or of any lienor [Rogers & Ford, its subcontractors, etc.] on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor [e.g. Florida Steel] records a claim of lien within said 30 day period," and

(c) must record a notice of commencement for the recommenced construction.

The wording cannot be clearer. Alton Towers did not involve cessation of construction; the legislature's establishment of priorities under §713.07(4) should not have been -- and was not -- used in Alton Towers.[2] Conversely, construction did cease in this case, and the Court must follow legislation prescribed for these circumstances.

Alton Towers interpreted only one section, F.S. §713.06(1), Fla. Stat. (1969), which states that "[t]he total amount of all liens allowed ... shall not exceed the amount of the contract price fixed by the direct contract." Multiple starts due to cessation and restart of work are nowhere

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[2]An alternate interpretation of Alton Towers is that construction did cease, but the court elected to omit that fact from the opinion. To stretch the case that far, one must also determine that the owner filed a new notice of commencement, and an affidavit of intent to recommence, which facts the court also elected to omit, but simply abbreviated to "Both parties complied with the requirements of the mechanic's lien law." 262 So.2d at 672. If those were the facts, it seems likely that the Court would have mentioned §713.07(4), Fla. Stat. (1969), in passing, the statute which begins "If construction ceases," because it would have had to determine whether Coplan's lien was filed prior to or after the new notice of commencement — or at least it would have been a more complete opinion that way, instead of only citing §713.06(1), Fla. Stat. (1969), which does not take into consideration different lien priorities. While this wholesale omission of facts and analysis is implausible, injection of a select few of these fictional facts is necessary for King's Point's argument, namely that in Alton Towers construction ceased, and that the owner filed a new notice of commencement. (King's Point does acknowledge the necessity of complying with that portion of §713.07(4) in recommencement cases. Answer Brief, p. 16, footnote 5.) King's Point also requires this court to believe that neither of the parties and none of the jurists sitting on the Circuit, District and Supreme Courts thought that priority of liens or §713.07(4) was relevant.

mentioned in §713.06(1). Section 713.07(4) does not contradict Alton Towers at all. Alton Towers was simply a Phase I v. Phase I case, where the court had to determine which of the liens which all related back to the same notice of commencement prevailed.

Hypothesizing what might have occured here, but did not, if, after the April 6 walkoff by Logan & Clark, King's Point desired to shift priorities, or preserve its rights to argue subtraction of Phase II costs from the Phase I fund, it should have filed, say, by April 15, 1981, its affidavit of intent to recommence. Had it done that, and Florida Steel did not file its claim of lien on or before May 15, 1981, then Florida Steel's actually recorded June 1, 1981 claim of lien would have been inferior to the January, 1982 liens of Rogers & Ford and its subcontractors, et al. To get around its failure to follow the mechanic's lien law, King's Point argues that it never had to file the affidavit because Rogers & Ford's lien was always superior to Florida Steel's under the Alton Towers opinion.

Besides ignoring the statute in this case, King's Point's argument gives a perfect reason to ignore the statute in every case, and that is why it does not make sense. Following the logic to its conclusion, if an owner ever chooses to finish a project once work has ceased, it stands to reason that it is going to cost some money to do it. Automatic adherence to what King's Point argues is the universal Alton Towers rule, i.e. "always pay finishers first," means that in every cessation case the owner will always deduct reasonable costs to complete from the fund remaining under the pre-abandonment contract before paying any unpaid pre-abandonment (i.e. Phase I) lienors. Only in those cases where there is money left in the fund will pre-abandonment lienors get paid. Apparently, King's Point feels that in every cessation/recommencement case, as long as the new notice of commencement is filed (without an affidavit of intent to recommence), the priorities are:

1. Lienors on the recommenced portion get paid in full first, and

2. If there are funds left, lienors from Phase I get paid, as far as the fund goes.

Yet, where an affidavit of intent to recommence is filed, the clear priorities set forth in F.S. §713.07(4) are:

1. Phase I lienors who file within 30 days get paid in full or pro rata, or are listed in the affidavit as unpaid, and then

2. Recommencement (Phase II) lienors get paid, and,

3. Phase I lienors who filed more than 30 days but less than 91 days after the filing of the affidavit of intent to recommence get paid with what, if anything, is left.

Once construction ceases, §713.07(4) comes into play, and this may alter priority, if an owner avails himself of the option, by cutting the Phase I liens, which relate back in time, into two groups -- those filing within 30 days, and those who do not. This is the owner's option that King's Point refers to. (If you wish to accelerate lien claiming and possibly "dump" some lienors to third place, you may do A or B. If you do neither, then first in time, first in right applies, as usual in real property recording, and here, per §713.07(2).)

The upshot of King's Point's position is that if an owner follows the statute (§713.07(4)) he must contest or pay those lienors who file within 30 days with the remaining funds, thereby depleting the fund for completion, but if he ignores the statute he has an opportunity to complete the ceased work with all the money of those who would have been paid had the statute been followed!! The owner argues that by ignoring the cessation/recommencement statute he may obtain greater benefits than if he followed the mechanic's lien law! The law should not allow one to accomplish something indirectly which he

may not do directly.[3] When King's Point states that this case is not a Phase I v. Phase II case, one wonders -- is there ever such a thing as a Phase II case? What would it be? There simply is no situation, other than the kind here, where the affidavit of intent to recommence can apply! King's Point, in short, bases its entire case on the result in Alton Towers to conclude -- without saying it -- that the Alton Towers opinion "repealed" §713.07(4).

No reported decision has been found discussing the necessity vs. option of an affidavit of intent to recommence under §713.07(4), although the Second District termed it "required" in Sarasota Commercial Refrigeration v. Schooley, 381 So.2d 1141, 1142 (Fla. 2nd DCA 1980), a case in which the owner did file it. In Tamarac Village, Inc. v. Bates & Daly Co., 348 So.2d 23 (Fla. 4th DCA 1977), the owner failed to file a notice of recommencement before beginning completion work. This violation of §713.07(4) and (§713.13(1)(a)) precluded the subtraction of completion costs from the contract price. The court need not have reached the affidavit of intent to recommence to determine priorities, since the owner's failure to follow the mechanic's lien law precluded its taking advantage of it. King's Point twists the simple holding (Answer Brief, p.18) by implying that had the notice of recommencement, alone, been filed, completion payments would have been subtracted. That conclusion cannot be reached by logic alone: The new notice is necessary, but is not enough.

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[3]Perhaps it should not be overlooked that King's Point does see some use for the affidavit. It is "simply an aid to ... owners and lenders [who] want to know the size, number and priority of Phase I liens ... that ... may have to be paid...." King's Point's Answer Brief, at 23. This explanation is insulting, since King's Point also offers the unvarying basic equation: FUND FOR PHASE I CLAIMANTS = MONIES LEFT UNDER CONTRACT less COST TO COMPLETE. Since the amount for Phase I claimants is so easily calculated, King's Point suggests that the affidavit "option" was signed into law by the Governor for curiosity seekers, i.e. just for fun to see who is claiming the balance. Florida Steel apologizes to the court for predicting earlier that King's Point would call it a Clerk's Relief Act.

King's Point's reliance on MacIntyre v. Torres, 358 So.2d 101 (Fla. 3d DCA 1978) is misplaced. The owner did not prevail in that case merely because he filed a notice of commencement. He prevailed because Torres did not have a statutory mechanic's lien. This was a Phase II v. Phase Nothing case. Torres was attempting to impose an equitable lien on any fund remaining in the owner's hands, not on the property. Parenthetically, today Torres' equitable claim, based on Crane Co. v. Fine, 221 So.2d 145 (Fla. 1969) is no longer recognized under §713.06(1). See also, e.g., Stratton of Florida, Inc. v. Cerasoli, 426 So.2d 59 (Fla. 2d DCA 1983).

The New Notice of Commencement

What is the purpose of the required new notice of commencement under §713.07(4)? Florida Steel suggests that its purpose is to allow a new lender to record a mortgage and allow an owner to refinance for the completion work, which mortgage will enjoy a higher priority than recommencement lienors' liens. For example, by observing this sequence:

1. Affidavit of intent to recommence filed.
2. New mortgage filed at least 30 days later.
3. New notice of commencement filed after the new mortgage,

the lender knows the maximum value of liens ahead of his mortgage. If all recommencement lienors' claims related back to the first notice of commencement, as King's Point implies that Alton Towers requires, then (a) there is absolutely no need for a new notice of commencement (since the "anchor" is already in place -- the first notice) and (b) the mortgagee might be walking into a multitude of potential foreclosure suits whereby he could be foreclosed out, and in any event have to defend the mortgagors' actions -- hardly a healthy policy. Yet King's Point suggests no reason for the new

notice of commencement if it is not the anchor date for recommencement lienors. Without the required affidavit, recommencement lienors are second in time, second in right to all Phase I lienors. First lienors must get paid first, which did not happen here.

Why the Bryan v. Owsley Lumber line of cases establishes that the affidavit must be filed

Under former §84.071(4) Fla. Stat. (1963), where a contractor defaulted, an owner recording a notice of default could recommence the work, and pay recommencement lienors ahead of original, perfected liens.

Two identical (but for one fact) cases involving §84.071(4) Fla. Stat. (1963) came out of the First District less than two years apart: John T. Wood Homes, Inc. v. Air Control Products, Inc., 177 So.2d 709 (Fla. 1st DCA 1965), and Bryan v. Owsley Lumber Company, 201 So.2d 246 (Fla. 1st DCA 1967). Each case involved a contractor who defaulted and abandoned the job site, leaving behind a perfected mechanic's lienholder, as here. In both cases, the owners sought to deduct the cost of completion from the amount remaining on the contract. Both cases were unanimous opinions; two of the three judges on the John T. Wood Homes panel also sat on the Bryan panel. The only difference: the owner in John T. Wood Homes failed to file a notice of default (mistakenly referred to as a notice of abandonment in the opinion), while the owner in Bryan did file it. The owner who failed to file lost the case, and was not allowed to subtract the cost of completion. The Bryan owner, who went the extra step, was allowed the setoff. Bryan, of course, was cited by this court in Alton Towers, as authority for set off in a case where the owner completely complies with the law.

Interestingly, the losing owner in John T. Wood Homes, not unlike King's Point, argued that filing the notice was pointless, since the lienor

already had actual knowledge of the default. King's Point has similarly argued that filing the present day affidavit of intent to recommence would also be pointless. "It is true that the filing of an affidavit of intention to recommence has no effect on already-claimed liens for pre-abandonment work." Answer Brief, p. 13. While that proposition may or may not be true, clearly two thirds of the Bryan panel (and that is all it takes) has ruled that the failure to file it at any time precludes the setoff.

The Fourth District has followed John T. Wood Homes. Melnick v. Reynolds Metals Company, 230 So.2d 490 (Fla. 4th DCA 1970). No court has ever disagreed with the holding in John T. Wood Homes.

The 1965 amendment to the lien law combined §§84.071(4) and (5) Fla. Stat. (1963), (the latter dealt with the predecessor to the present affidavit of intent to recommence, which was filed only on abandonment for reasons other than contractor default) creating the present §713.07(4).[4] Today, if construction ceases before completion for any reason, the owner may file the affidavit of intent to recommence, including, as is expressly provided, a provision identifying which Phase I lienors have not been paid. There was nothing stopping King's Point from filing the affidavit and listing Florida Steel as unpaid, and then defending the case as the owner in Bryan did. Section 713.07(4) specifically allows the owner to continue construction without paying Phase I lienors, but the price for that right is filing the affidavit of intent to recommence. King's Point's failure to file the affidavit and list Florida Steel as unpaid prevented the priority switching, and precludes King's Point from deducting the costs of completion because of its failure to follow the mechanic's lien law fully. John T. Wood Homes,

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[4]An analysis of the purpose, history, and mechanics of the affidavit of intent to recommence is contained in 2 Rakusin, Florida Mechanics' Lien Manual, §14.02, included at A2. pp. 1-16.

supra; Melnick, supra.

The Bryan/Alton result is not an absolute rule; it obtains only when an owner has completely complied with the lien law. While the "completely complying innocent party vs. completely complying innocent party" logic used in Bryan was approved by this Court in Alton Towers, the necessity of filing the notice of default from Bryan was not converted to a necessity of an affidavit of intent to recommence in Alton Towers, because, again, §713.07(4) only applies when construction ceases, which it did not in Alton Towers. The affidavit listing Coplan Pipe as unpaid was unnecessary in Alton Towers; the affidavit listing Florida Steel as unpaid was necessary before recommencing here. Thus, King's Point has not completely complied with the mechanic's lien law.[5]

Meredith v. Lowe's of Florida, Inc., 405 So.2d 1061 (Fla. 5th DCA, 1981) does not help King's Point because Meredith is not a recommencement case, and does not involve a new notice of commencement; §713.06(1) arguments apply, therefore, because two tiers of priorities are not present. It should also be noted that the owner in Meredith affirmatively discharged his responsibilities under §713.06(3)(e) by filing an action for declaratory relief to determine how much was due to various lienors.

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[5]If this sounds like the statute celebrates technical form, one is reminded of Justice O'Connell in All State Pipe Supply Co., Inc. v. McNair, 89 So.2d 774, 775 (Fla. 1956): "The Mechanic's Lien Law ... is harsh in many respects, as applied to an owner, and no one improving property can ignore its provisions without coming to grief," and Judge Letts in American Fire and Cas. v. Davis Water, etc., 358 So.2d 225 (Fla. 4th DCA 1978). "The ... ill conceived, confusing, patchwork amendments [to Chapter 713] ... have all combined to make life miserable for judges, lawyers ... and the vitally affected construction and lending industries."

FLORIDA STEEL DENIES STIPULATING THAT COSTS INCURRED IN COMPLETING UNDER ROGERS & FORD NINE MONTHS LATER IS EQUIVALENT TO ESTABLISHING DAMAGES BECAUSE OF LOGAN & CLARK'S BREACH, OR ESTABLISHING THE "COST TO COMPLETE", AS REFERRED TO IN THE CASES.

Attempting, still, to convince the Court that Florida Steel is due no funds even though no affidavit of intent to recommence listing Florida Steel as unpaid was filed, and even though payments to unperfected Phase II lien claimants were made ahead of Florida Steel's earlier perfected lien, King's Point argues a theme new to this three year litigation -- that Florida Steel stipulated that the incurred cost to complete under Rogers & Ford's 1982 contract was equivalent to damages suffered on account of Logan & Clark's breach, or was equal to the "specific meaning" which King's Point had in its mind. Answer Brief, p. 26. The trial court, in its Final Judgment, found that "upon the facts contained in the Pre-Trial Stipulation", King's Point's property was liable for Florida Steel's lien claim (R. 81). King's Point has not previously alleged that the facts as found or applied were improper.

Florida Steel never stipulated that the Rogers & Ford contract price, or any part of it, was equivalent to damages. Florida Steel did stipulate (A.11 at 3b(xxix)) that the reasonable cost incurred by King's Point in completing the work was greater than the $2,522,910 remaining under the contract. Those costs to complete were incurred in 1982 -- nearly a year later and after the job had been abandoned -- not at the time of breach, while the job had momentum, while the cranes and subcontractors were on the job site and scheduled to remain, while the market was in its then downswing, before steel rebar at the job site rusted, etc., etc. A ten to fifteen percent, or more, increase in costs to start a job up cold nine months later did not, and does not, seem unreasonable to Florida Steel.

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The more relevant facts stipulated to are contained a few paragraphs earlier in the Stipulation. (A. 11 at ¶3b(xxiv)). As the exhibits to the stipulation demonstrate, apparently omitted from the initial appendix, but attached hereto (A.2d 17-19; R. 77-79), King's Point never pressed a damage claim for breach against Logan & Clark, and, in fact, recovered nothing on any compulsory counterclaim which was, or should have been, raised in the trial court. If the results of the Logan & Clark arbitration/lawsuit are binding on Florida Steel, Kings Point proved no damages whatever because of Logan & Clark's failure to post payment and performance bonds, or for abandoning the job.[6]

King's Point's attempt to prove, for the first time ever in the Supreme Court no less, the April, 1981 "present value" of the 1982 Rogers & Ford contract by suggesting that the "huge 'cushion' of excess costs makes it pointless to speculate whether King's Point might have saved a few dollars by recommencing a little earlier than it did," Reply Brief p. 28, merits no reply other than "too little, too late." Counsel's assertion that "completion costs would have consumed the entire unpaid contract price even if Rogers & Ford started work the morning after Logan & Clark abandoned," id., is unsupported speculation at any level of court. King's Point articulate counsel drafted the suddenly ambiguous Pre-Trial Stipulation, yet at page 27 of its brief King's Point argues that it "never intended to stipulate only that completion costs were reasonable as of the date of recommencement." While it would not

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[6]The arbitrators did not determine that no monies were due Logan & Clark for quantum meruit. Logan & Clark v. Adaptable, 450 So.2d 1189 (Fla. 4th DCA 1984). It is speculation to guess what, if anything, Logan & Clark would have been awarded under that theory. A fortiori, in no event does the arbitrators' award show that King's Point suffered damages on account of the breach -- it only shows that it did not owe an additional $2,522,910 on the contract theory. In no case does it show that the §713.01(3) "contract price" was reduced by any amount due to breaches.

have been difficult to state "King's Point was damaged by $ XXX on account of Logan & Clark's breach," -- if that were the agreement -- or "reasonable costs to complete as defined in so-and-so case was $ XXX," nothing similar is in the stipulation anywhere. To this date, Florida Steel has not figured how the first 7 to 10 floors, which includes the disproportionately expensive footings, of a 19 story concrete shell were built for $782,000 (because no payments were made to anyone for construction during February through April, 1981) and yet it still cost several hundred thousand dollars more than $2,500,000 (four times as much) to do the remaining 9 to 12 floors. Admittedly, Florida Steel's perplexity is of no relevance, here, other than to stress disagreement with King's Point's position on the stipulation.

CONCLUSION

Fla. Stat. §713.07(4) applies only where construction has ceased. Nowhere in Alton Towers is that fact indicated, distinguishing this case entirely. Only one statute was applied in Alton Towers, F.S. §713.06(1). This case is determined by F.S. §713.07(4). Relative priorities was never an issue in Alton Towers. Once construction ceases, if an owner files the affidavit of intent to recommence, he may contest the amount and continue with construction, utilizing the logic in Bryan, where the owner filed the notice of default, the predecessor "contractor default" priority switching mechanism. Like the owners in John T. Wood and Melnick, King's Point did not comply with the mechanic's lien law and must suffer the same fate.

If one who files a notice of recommencement (required anyway under §713.13(1)(a)) may automatically subtract the cost of completion, then §713.07(4) has no meaning whatever. The statute simply cannot be ignored. Alton Towers does not "repeal" the statute for cessation/recommencement cases.

The answer to the certified question is "No." Where construction has ceased, before recommencement, if disbursement of the contract fund is not made to Phase I mechanic's lien claimants, an owner must file both the affidavit and a new notice of commencement, or he will be liable to pay Phase I lienors to the extent of pre-recommencement funds remaining at the time construction ceased.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Clunet R. Lewis, Esquire, Jaffe, Snider, Raitt & Heuer, P.A., Attorneys for King's Point, 1800 First National Building, Detroit, MI 48226 and Rosemary Cooney, Esquire, Paxton, Crow, Bragg & Austin, P.A., P. O. Drawer 1189, West Palm Beach, FL 33402 this 31st day of May, 1985.

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