

01A6-7-89

SUPREME COURT OF FLORIDA

HOME ELECTRIC OF DADE COUNTY, INC.,

Petitioner,

v.

ROY B. GONAS and  
CAMI E. GONAS,

Respondents.

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Appeal from the District Court of  
Appeal of Florida, Third District

RESPONDENTS' ANSWER BRIEF

**FILED**  
SD J. WHITE  
APR 10 1989  
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By \_\_\_\_\_  
Deputy Clerk  
Case No. 73,337

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TABLE OF CONTENTS

Table of Citations	ii
Statement of the Case and Facts	1
Summary of Argument	2
Argument	2

I

WHETHER HOME ELECTRIC WAS DEPRIVED OF ENFORCING ITS LIEN FOR FAILING TO RESPOND TO A SECTION 713.16(2), FLORIDA STATUTES, PRESUIT DEMAND FOR ACCOUNTING.

II

4

WHETHER A SECTION 713.16(2), FLORIDA STATUTES, DEMAND FOR ACCOUNTING NEED INCLUDE A WARNING OF THE CONSEQUENCES FOR NON-COMPLIANCE.

Conclusion	5
Certificate of Service	5

TABLE OF CITATIONS

Cases

<u>Alex v. Randy, Inc.</u> , 305 So.2d 13 (Fla. 1st DCA 1974)	3
<u>Foy v. Mangum</u> , 528 So.2d 1331 (Fla. 5th DCA 1988)	3-4
<u>Gonas v. Home Electric of Dade County, Inc.</u> , 537 So.2d 590 (Fla. 3d DCA 1988)	2
<u>Hardrives Company v. Tri-County Concrete Products, Inc.</u> , 489 So.2d 1211 (Fla. 4th DCA 1986)	3
<u>Holly v. Auld</u> , 450 So.2d 217 (Fla. 1984)	4
<u>Palmer Electric Services, Inc. v. Filler</u> , 482 So.2d 509 (Fla. 2d DCA 1986)	2-3,4
<u>Sheffield-Briggs Steel Products, Inc. v. Ace Concrete Service Co.</u> , 63 So.2d 924 (Fla. 1953)	3

Statutes

Section 713.16(2), Florida Statutes	2,3,4
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Other Authorities

Section 8, Ch. 77-353. Laws of Florida	5
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## STATEMENT OF THE CASE AND FACTS

This is an appeal of an appellate court decision reversing a final judgment granting the foreclosure of a mechanic's lien.

On October 6, 1986, Home Electric of Dade County, Inc. (Home Electric) filed a lien foreclosure action against Roy B. Gonas and Cami E. Gonas (Owners) for subcontracted electrical work.<sup>1</sup> (R v.I 1-3) The initial lien was dated July 10, 1986, the corrected lien sued upon was dated September 15, 1986, and both were signed by Home Electric's counsel. (R v.II 78-79) Prior to suit, on September 12, 1989, Home Electric received Owners' September 11, 1986 demand for an accounting and work done pursuant to section 713.16(2), Florida Statutes, seeking that subcontractor "to provide the information under oath", (R v.I 9) That same day Home Electric responded through its counsel with a threat that "I shall file suit". (R v.II 196, Def. exh. L) Home Electric did not comply with the statute by providing Owners with the requested information under oath. (Conceded in Home Electric's Brief, p. 1, and see R v.II 197-198)

Owners moved for summary judgment due to Home Electric's non-compliance with the statute. (R v.I 5) The trial court denied the motion (R v.I 22) and later entered a Final Judgment of Foreclosure in favor of Home Electric. (R v.I 93) The Court of Appeal, Third District, reversed. (R v.I 96-98) Home Electric appeals that appellate court decision.

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<sup>1</sup> Home Electric's reference in its Statement of the Case and Facts to seeking an equitable lien is misplaced in these Supreme Court proceedings. The final judgment and appellate court opinion are void of such reference.

## SUMMARY OF ARGUMENT

It is well established a lienor is held to strict compliance of the Mechanics' Lien Act. Section 713.16(2), Florida Statutes, expressly provides for giving a land owner the requested information under oath regarding the status of the pertinent account. Failure to so comply with the statutory request deprives the lienor of the lien.

In requesting an accounting under the statute, the owner need not warn the lienor of the consequences for failing to reply. The statute is void of any such requirement. Particularly, as in the instant case, lienor, Home Electric, had thirty (30) days to comply with the statute. And, further, it had the assistance of counsel during the material time-period.

The court of appeal was correct in reversing the trial court's lien foreclosure judgment due to Home Electric's failure to comply with the applicable statute.

## ARGUMENT

### I

WHETHER HOME ELECTRIC WAS DEPRIVED OF  
ENFORCING ITS LIEN FOR FAILING TO RESPOND  
TO A SECTION 713.16(2), FLORIDA STATUTES,  
PRESUIT DEMAND FOR ACCOUNTING.

In the opinion under review the Court of Appeal, Third District, noted a conflict of its decision,<sup>2</sup> following Palmer Electric Services,

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<sup>2</sup>Gonas v. Home Electric of Dade County, Inc., 537 So.2d 590 (Fla. 3d DCA 1988).

Inc. v. Filler, 482 So.2d 509 (Fla. 2d DCA 1986), with Alex v. Randy, Inc., 305 So.2d 13 (Fla. 1st DCA 1974) concerning the application of section 713.16(2), Florida Statutes, on fulfilling a demand for an accounting requirement in order to effect a lien.<sup>3</sup> The conflict arose due to the Alex court requiring the statutory demand to warn the lienor of the consequences for failing to comply. The Filler court and the Third District rejected Alex. Here, then, is whether non-compliance deprives one of a lien and whether the demand letter was adequate without the warning as to the consequences for non-compliance.

Section 713.16(2), Florida Statutes, provides:

(2) At the time any payment is to be made by the owner to the contractor or directly to a lienor, the owner may in writing demand of any lienor a written statement under oath of his account showing the nature of the labor or services performed and to be performed, the materials furnished and to be furnished, the amount paid on account to date, the amount due, and the amount to become due. Failure or refusal to furnish the statement within 30 days after the demand, or furnishing of a false or fraudulent statement, shall deprive the person so failing or refusing to furnish such statement of his lien.

Home Electric admits to not having complied with the statute. (Pet. Brief, p. 1; R v.II 197-798) Strict compliance to the Mechanics' Lien Law is required. Sheffield-Briggs Steel Products, Inc. v. Ace Concrete Service Co., 63 So.2d 924 (Fla. 1953); Hardrives Company v. Tri-County Concrete Products, Inc., 489 So.2d 1211 (Fla. 4th DCA 1986); Foy v. Mangum, 528 So.2d 1331 (Fla. 5th

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<sup>3</sup>The apparent purpose for providing such a demand letter is to give land owners an opportunity to verify work and payments in order to avoid double payments or paying "blindly".

DCA 1988) Applying the statute, the lien fails. (Section 713.16 (2), Florida Statutes; Palmer Electric Services, Inc. v. Filler, supra.)

II

WHETHER A SECTION 713.16(2), FLORIDA  
STATUTES, DEMAND FOR ACCOUNTING NEED  
INCLUDE A WARNING OF THE CONSEQUENCES  
FOR NON-COMPLIANCE.

Section 713.16(2), Florida Statutes, is void of any requirement to warn in the demand for an accounting what the consequences might be if the lienor does not comply. The Alex court was wrong in reading into a statute what is clearly not there, as a court is without the power to "extend, modify or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power." Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984) (Court's emphasis)

Though not raised in its brief before the Third District, Home Electric now argues the demand letter had to contain a warning for non-compliance.<sup>4</sup> (The items demand in the letter follows the provisions of the statute. See R v.I 9) In its initial affidavit in opposition to the motion for summary judgment, and in an apparent attempt to bring itself within Alex, Roy Boyd, as Home Electric's president, said "plaintiff is not acquainted with the mechanic's lien law and has no education or training in this field of law or any field of law." (R v.I 20) But here the record shows counsel

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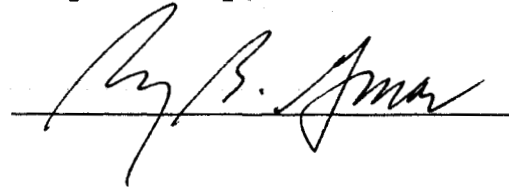
<sup>4</sup>The content of the demand was not questioned by Home Electric in its appellate court brief. Therefore, Owners oppose that argument's propriety now.

for Home Electric signed the July and September 1986 liens and had correspondence with Owners in-between, thereby leaving every appearance Home Electric had the assistance of counsel throughout the time to respond. Thus, the facts here even place this case outside of Alex. Furthermore, the instant case and Filler were decided when the statute had a thirty day response time, not ten days as the statute previously provided during Alex.<sup>5</sup>

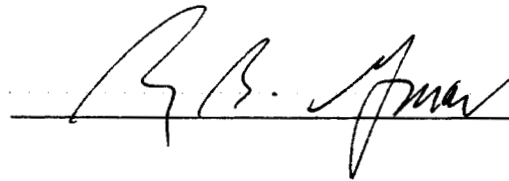
CONCLUSION

The decision of the Court of Appeal, Third District, should be affirmed due to Home Electric's admitted non-compliance with the applicable statute. Costs and fees should be awarded respondents.

Respectfully,

A handwritten signature in cursive script, appearing to read "R. B. Amar", written over a horizontal line.

THE UNDERSIGNED hereby certifies that a copy of the foregoing answer brief was served by mail on Harold Turtleaub, attorney for petitioner, 9995 Sunset Drive, Ste. 108, Miami, Florida 33173 this 6<sup>th</sup> day of April 1989.

A handwritten signature in cursive script, appearing to read "R. B. Amar", written over a horizontal line.

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<sup>5</sup>The change from a ten to a thirty day response time was passed by the legislature in 1977. Section 8, Ch. 77-353, Laws of Florida.