

12-23

IN THE SUPREME COURT OF FLORIDA

FILED
SID. J. WHITE
NOV 23 1988
CLERK, SUPREME COURT
By _____
Deputy Clerk

ROY B. GONAS and
CAMI E. GONAS,

Appellants,

v.

Case No. 73, 337

HOME ELECTRIC OF DADE
COUNTY, INC.,

Appellee.

AN APPEAL FROM THE DISTRICT COURT
OF APPEAL, THIRD DISTRICT
CASE NO. 88-306, 88-794

JURISDICTIONAL BRIEF OF PETITIONER,
HOME ELECTRIC OF DADE COUNTY, INC.

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STATEMENT OF ISSUE

WHETHER THIS COURT HAS SUBJECT MATTER JURISDICTION OVER THIS CASE PURSUANT TO ARTICLE V (b)(3) OF THE FLORIDA CONSTITUTION AND RULE 9.030(a)(2)(A)(IV) OF THE FLORIDA RULES OF APPELLATE PROCEDURE BY VIRTUE OF THE THIRD DISTRICT COURT OF APPEAL ALIGNING ITSELF WITH THE SECOND DISTRICT AND ACKNOWLEDGING A CONFLICT WITH THE FIRST DISTRICT REGARDING THE INTERPRETATION OF FLORIDA STATUTE 713.16(2)

INTRODUCTION

In the court below, the Petitioner, Home Electric of Dade County, Inc. was the Plaintiff. The Respondents, Roy B. Gonas and Cami E. Gonas were the Defendants. In this brief, the parties will be referred to as they stood in the trial court or as they will stand in this court, to wit: Plaintiff/Petitioner and Defendants/Respondents or by name. The symbol "R" will be used to designate the Record on Appeal with a corresponding page designation and the symbol "T" will be used to designate any pages of transcript of import.

STATEMENT OF THE CASE

On October 6, 1986, the Plaintiff filed a Complaint to Foreclose Claim of Lien. (R v.I 1-3) On October 24, 1986 the Defendants filed their Answer and Affirmative Defenses. (R v.I 4) After extensive discovery the case was tried without a jury. Final Judgment was granted in the Plaintiff's favor. (R v.I 93-94) A timely notice of appeal was filed by the Defendants on January 28, 1988. (R v.I 92)

The Third District issued an order of reversal and a mandate. A timely motion for rehearing was filed by the Plaintiff and ruled upon adversely. Plaintiff timely filed a notice invoking this court's discretionary jurisdiction.

ARGUMENT

WHETHER THIS COURT HAS SUBJECT MATTER JURISDICTION OVER THIS CASE PURSUANT TO ARTICLE V (b)(3) OF THE FLORIDA CONSTITUTION AND RULE 9.030(a)(2)(A)(IV) OF THE FLORIDA RULES OF APPELLATE PROCEDURE BY VIRTUE OF THE THIRD DISTRICT COURT OF APPEAL ALIGNING ITSELF WITH THE SECOND DISTRICT AND ACKNOWLEDGING A CONFLICT WITH THE FIRST DISTRICT REGARDING THE INTERPRETATION OF FLORIDA STATUTE 713.16(2)

As of April 1, 1980, Article V. Sec. 3(b)(3) of the Florida Constitution was amended and took effect. The pertinent portions of those revisions read:

(b) Jurisdiction - The Supreme Court:

(3) May review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law.

This court by a 1980 amendment, modified the relevant portions of the Rules of Appellate Procedure as contained within Rule 9.030 (a)(2)(A)(IV) to read:

The discretionary jurisdiction of the Supreme Court may be sought to review: (A) Decisions of district courts of appeal that: (IV) Expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law ...

On October 4, 1988, the Third District Court of Appeal rendered an order. The court reversed a lower court decision

which rendered a final judgment to foreclose a mechanic's lien.

A copy of the Appellate Court's order is marked as Exhibit "A" and a part of the appendix, however, to the relevant portions relating to this court's jurisdiction read:

We approve the reasoning and rationale of Palmer and, consistent with Palmer, we hold that under section 713.16(2) a lienor must, upon proper demand by an owner, furnish a statement of account within thirty days or lose the lien. The owner's demand need not warn the lienor of the consequences of failing to respond.


In so holding, we align ourselves with the second district, acknowledge conflict with the first district, and reverse the judgment of foreclosure.

It is apparent from the decision of the Third District that there is a direct conflict in the cases of Alex v. Randy, Inc. 305 So. 2d 13 (Fla. 1st DCA 1974) and Palmer Elec. Servs., Inc. v. Filler 482 So. 2d 509, 510 (Fla. 2d DCA 1986) in the interpretation of Florida Statute 713.16(2). Had the Third District applied the rule of law announced in the Alex case, it is respectfully submitted that a more reasonable and equitable ruling would have resulted in the case at bar.

CONCLUSION


Petitioner asserts that this court should accept jurisdiction over this case not only to the terribly unjust result of this particular matter but to establish the correct rule of law which the Petitioner contends is the holding in Alex v. Randy, Inc. 305 So. 2d 13 (Fla. 1st DCA 1974).

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing brief has been furnished by mail to: ROY B. GONAS, Attorney for Defendants, 2600 Douglas Road, Suite 1008, Coral Gables, FL 33134 this 28 day of November, 1988.



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