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THE SUPREME COURT OF FLORIDA

STRESSCON, a general partnership whose partners are LONE STAR FLORIDA PENNSUCO, INC. and ADELAIDE BRIGHTON CEMENT (FLORIDA), INC.,

Petitioner,

vs.

REYNALDO AND VIVIANA MADIEDO

Respondents.

_____/

Case No.: 76,234

ON PETITION FOR REVIEW FROM THE THIRD DISTRICT COURT OF APPEAL
Case No.: 89-02872

ANSWER BRIEF OF RESPONDENTS ON THE MERITS

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INTRODUCTION

The Petitioner, STRESSCON, a general partnership whose partners are LONE STAR FLORIDA PENSUCCO, INC. and ADELAIDE BRIGHTON CEMENT (FLORIDA), INC. shall be referred to as "Plaintiff" or "Petitioner". REYNALDO and VIVIANA MADIEDO shall be referred to as "Defendants" or "Respondents".

The underlying action consists of a suit to foreclose a mechanic's lien filed by the Plaintiff against Defendants' property.

All references to the record on appeal will be designated by the letter "R." All references will be to Petitioner's Appendix as designated by the letter "A." The transcription (TR.) of the hearings and the depositions including the Appendix at A. __ will be referenced: (A.____ TR at [page]). All emphasis is supplied unless otherwise noted.

TABLE OF CITATIONS

STATUTES

STATEMENT OF THE CASE AND FACTS

Respondents adopt Petitioner's Statement of the Case and Facts except as set forth below.

A valid written contract existed between Petitioner (a subcontractor) and Lartran Construction (also a subcontractor) (A1). No contract existed between Petitioner and Respondents (A3).

Petitioner's claims against the Respondents arose solely from its alleged compliance with the Florida Mechanic's Lien Law.

Pursuant to §713.16(2), Florida Statutes, Petitioner, upon request by the Respondents, had 30 days to provide Respondents with a written statement under oath requiring it to account for its labor and services. It is undisputed that Respondents requested such a written statement and that although a statement was provided by the Petitioner, said statement was not under oath (A7). Moreover, Petitioner claimed it was due and owing in its Claim of Lien the sum of $24,150.00. Said Claim of Lien was dated August 27, 1987 (A4). The unsworn letter sent by the Petitioner to the Respondents claimed $25,236.75 was due and owing. No explanation was set forth in the November 9, 1987 letter concerning the discrepancy between the amount reflected in the Claim of Lien and the amount demanded in the letter (A7).

Respondents paid the general contractor, Pentagon Construction, for the work performed by the Petitioner. Pentagon then paid Lartran Construction, which filed bankruptcy without paying the Petitioner (A. 33 TR at 13), (A. 34 TR at 24) and (A. 34 TR at 21).

Upon being notified of Petitioner's claim, the Respondents withheld a final payment of $25,000.00 to the general contractor Pentagon Construction (A.33 TR at 16) but paid said sums to Pentagon at the conclusion of the Dade County Circuit Court action (Petitioner's Brief page 3).

Only after suit was filed and Respondents raised in their Motion to Dismiss that Petitioner's Lien was void since the written statement as required by §713.16(2) was not under oath, did the Petitioners attempt to cure the defect by filing various Affidavits (in January of 1988, in response to the Motion to Dismiss; on March 15, 1988 in opposition to Motion for Summary Judgment; and on March 16, 1988, in an Affidavit of Proof (A.8, A.14, and A.15). All of these Affidavits were filed in connection with the litigation and none of said Affidavits complied with §713.16(2) in that they were not delivered within 30 days after demand for same as required by said statute.

Although the trial court initially denied Respondent's Motion for Summary Judgment on two occasions, it granted Summary Judgment based upon this Court's decision in Home Electric of Dade County, Inc. v. Gonas, 547 So.2d 109 (Fla. 1989) on the grounds that the very subsection in question requires a lien claimant to "strictly comply" with §713.16(2) and since the Petitioner failed to "strictly comply," the lien was voided (A.27). Thereafter, the Third District Court of Appeal affirmed the lower court decision based upon the same principle of law (A.35).

SUMMARY OF ARGUMENT

The Trial Court and Third District Court of Appeal were eminently correct in depriving the Petitioner of its Lien since §713.16(2), Florida Statutes, requires strict compliance, inasmuch as the Mechanic's Lien Law is in derogation of the common law. Petitioner did not "strictly comply" with said statute as the letter was not under oath.

To the extent certain portions of the Mechanic's Lien Law require something less than "strict compliance," specific statutory authority was mandated by the legislature requiring the lesser standard. That is, in connection with errors or omissions in Claims of Lien, said errors or omissions would not void the Claims of Lien in the discretion of the trial court as long as no prejudice was shown; in connection with Notices to Owner, "substantial compliance" as opposed to "strict compliance" was legislated into the Mechanic's Lien Law. Since there was no specific statutory enactment permitting "substantial compliance," discretion of the court, or a showing of prejudice or lack thereof in connection with §713.16(2), the "strict compliance test" must be followed. To the extent that the Petitioner or the courts themselves are unhappy with strict compliance as mandated under §713.16(2), it is up to the legislature, not the courts, to dispense with the statutory requirement that the notice in question must be under oath. Any attempt to recede from Home Electric of Dade County, Inc. v. Gonas, 547 So.2d 109 (Fla. 1989) will open up a pandora's box by permitting every lien claimant who has not

"strictly complied" with the Mechanic's Lien Law to have his lien upheld on the grounds that the property owner was not prejudiced or that the strict compliance rule has been replaced by a lesser standard known as "substantial compliance." If Petitioner's position is to be accepted, "strict compliance," a requirement imposed on the Mechanic's Lien Law by the courts of this state for over 65 years and recently affirmed in the very subsection before the Court in the Gonas case, would be abrogated.

ARGUMENT

FAILURE TO NOTARIZE A STATEMENT AS REQUIRED UNDER §713.16(2), FLORIDA STATUTES (1987), VOIDS A MECHANIC'S LIEN SINCE THE LIEN CLAIMANT HAS FAILED TO "STRICTLY COMPLY" WITH THE SUBSECTION IN QUESTION.

Section 713.16(2), Florida Statutes, provides, in relevant part, that:

> The owner may in writing demand of any lienor a written statement under oath of his account... failure or refusal to furnish this statement within 30 days after the demand... shall deprive the person so failing or refusing to furnish such statement of his lien.

Section 713.16(2) is clear and unequivocal: A lienor shall be deprived of his claim of lien if he fails to provide "such statement" within 30 days after demand is made. "Such statement" is defined as "a written statement under oath of his account."

It is undisputed that Plaintiff did provide a statement, but that it was never under oath.

The recently decided case of Home Electric of Dade County, Inc. v. Gonas, 547 So.2d 109 (Fla. 1989) is on point and dispositive of all issues involved in this case. This Court found conflict between the decision in Gonas v. Home Electric, Inc., 547 So.2d 590 (Fla. 3d DCA 1988) and Alex v. Randy, Inc., 305 So.2d 13 (Fla. 1st DCA 1974). In Alex, the First District construed §713.16(2) liberally and ruled that a demand letter must include notice of the statutory time for reply. That is, the court read additional requirements into §713.16(2) that were not set forth in

the statute. This Court held that the subsection in question must be complied with strictly.

This Court stated that the Home Electric lien was void and disapproved Alex because:

> Home did not furnish the required statement under oath within 30 days... we agree with the instant District Court that Alex should not control. As this court stated before, mechanic's liens are "purely creatures of statute." Scheffield-Briggs Steel Products, Inc., v. Ace Concrete Service. Co.. 63 So.2d 924, 925 (Fla. 1953). As a statutory creature, the Mechanic's Lien Law must be strictly construed. Foye v. Mangum, 528 So. 2d. 1331 (Fla. 5th DCA 1988); Palmer Electric Services v. Filler, 482 So.2d 509 (Fla. 2nd DCA 1986).

Home Electric at 110.

The Court went on to hold as follows:

> We hold "that the Mechanic's Lien Law is to be strictly construed in every particular and strict compliance is an indispensable prerequisite for persons seeking affirmative relief under the statute." Palmer, 42 So. 2d at 510.

Home Electric at 111.

In its Brief on the merits, Petitioner time and time again states that because it has "substantially complied" with the statute and there was no prejudice to the owner, substantial compliance should be sufficient even though the required statement was not under oath. Petitioner further points out that various lines of cases have developed under the Florida Mechanic's Lien Law which only require substantial compliance. Many of those cases

held that since the owner was not prejudiced, substantial compliance was enough to save or validate the Claim of Lien.

What Petitioner fails to point out to this Court, however, is that in all of the cases holding substantial compliance to be sufficient, there are specific statutory exceptions in Chapter 713 that permit something less than strict compliance.

Petitioner cites two lines of cases wherein something less than "strict compliance" is permitted. The first involves cases under §713.06 concerning notices to owner while the second involves §713.08, concerning Claims of Lien. In each of the above cited sections, there is specific statutory authority permitting something less than "strict compliance."

Section 713.08(4)(a) states:

> The omission of any of the foregoing details or errors in such Claim of Lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error.

Obviously the cases holding that "substantial compliance" is sufficient to validate a faulty Claim of Lien in absence of a showing by the owner that said defect worked to his prejudice are not an attempt to abrogate the "strict compliance rule" since "substantial compliance" is all that is required under the statutory scheme in Florida. See J.R. Fenton, Inc. v. Gallery 600, Inc., 488 So. 2d 587 (Fla. 2d DCA 1986); Centex-Winston Corporation v. Crown Paint, Inc., 294 So. 2d 694 (Fla. 3d DCA 1974); Blinn v. Dumas, 408 So. 2d 683 (Fla. 1st DCA 1982); Midstate Contractors,

Inc. v. Halo Development Corp., 342 So. 2d 1078 (Fla. 2d DCA 1977); and Yell-For-Pennell, Inc. v. Joab, Inc., 243 So. 2d 439 (Fla. 3d DCA 1971).

The statutes permitting "substantial compliance" involving defects in Claims of Lien are not new. In fact, they have been in our statutory scheme for over 50 years:

> Appellant contends strongly that the Notice of Lien was not sufficient to meet the statutory requirements. We have examined the notice and while, as the master stated, it may have been drawn in a rather slip-shod fashion, it was a substantial compliance with the requirements as set forth in section 14 of the Act, especially in view of the last paragraph of this section, as follows:
>
> The omission of any of the foregoing details, or errors in such Claim of Lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected to a substantial extent by such omission or error.
>
> An examination of the record fails to disclose any abuse of discretion on the part of the trial court in holding that there was substantial compliance with the terms of the statute, nor do we see how the Appellants were prejudiced by the form of the Notice of Lien. See Florida New Deal Co. v. Crane Co., 142 Fla. 471, 194 So. 865.

Roughan et al. v. Rogers 199 So. 572, 574 (Fla. 1940).

Section 713.06(2)(c) states in connection with the Notice to Owner, that "the notice may be in substantially the following form." Again, as in the Claim of Lien statute there is a specific statutory enactment permitting "substantial compliance" in connection with Notices to Owner. Case law permits defects in

Notices to Owner as long as the notices "substantially" set forth certain information. Case law has developed to indicate that as long as an owner is not prejudiced by the information set forth in the notice, "substantial compliance" will have been achieved. See Fidelity and Deposit Company of Maryland v. Delta Painting Corp., 529 So.2d 781 (Fla. 4th DCA 1988); Symons Corporation v. Tartan-Lavers Delray Beach, Inc., 456 So.2d 1254 (Fla. 4th DCA 1984).

It bears repeating that in both the Claim of Lien statute (§713.08) and the Notice to Owner statute (§713.06) the legislature has mandated that "strict compliance" is unnecessary and something less than that will be acceptable as long as no prejudice has been shown to the owner. Unlike the aforementioned statutes, §713.16 nowhere permits "substantial compliance." The statute is clear and unambiguous:

> failure of a lien claimant to provide a written statement under oath within 30 days after the demand... shall deprive the person.. failing to furnish such statement of his lien.

There is no statement in the statute permitting substantial compliance; there is no statement in the statute indicating that if an owner is not prejudiced, defects in the letter, including failing to swear to it, could be overlooked. Because there is not a statutory exemption to "strict compliance," the Petitioner herein must be held to the "strict compliance" standard.

This Court held some 65 years ago that "strict compliance" is an absolute necessity in order for a lien claimant to be protected under this chapter:

> The lien is strictly statutory, and before any

> person may have such lien the statutory provision must be strictly complied with, and before he can enforce such lien the Claimant must allege and prove a strict compliance with every requirement of the statute.

Curtis Bright Ranch Co. v. Selden Cypress Door Co., 107 So. 679, 684 (Fla. 1926).

The courts of this state consistently have held that because the Mechanic's Lien Law is a statutory creation, in derogation of the common law, the lien law must be strictly construed in every particular.

> "The acquisition of a mechanic's Lien is purely statutory. The courts have uniformly held that to acquire such a lien, the mechanic's lien law must be strictly complied with." Trushin v. Brown, Fla. App (3rd Dist.) 132 So. 2d 357.

> The Supreme Court of Florida in admonishing the trial courts not to extend the Mechanic's Lien Law beyond the legislative boundaries fixed by the wording of the statute stated:
>
> We have repeatedly held that mechanic's liens are purely creatures of statute and that for a subcontractor or a materialman to acquire one, the statute must be strictly complied with. Scheffield-Briggs Steel Products v. Ace Concrete Service Co.. 63 So.2d 924.

Babe's Plumbing v. Maier, 194 So.2d 666, 668 (Fla. 2d DCA 1967).

The above maxim has been used time and time again:

> It has been stated over and over again by our Appellate Courts of Florida that the mechanic's lien law is in derogation of the common law. So that tells us the law must be strictly construed and complied with in every detail.
>
> "The acquisition of the mechanic's lien is purely statutory. The courts have uniformly held that to acquire such a lien, the

> Mechanic's Lien Law must be strictly complied with." Sheffield-Briggs Steel Prod. v. Ace Concrete Serv. Co., Fla. 1953, 63 So.2d 924; Trushin v. Brown, 132 So.2d 357 (3d DCA Fla. 1961)... Crane Co. v. Fine. 221 So.2d 145 (Fla. 1969); Daly Aluminum Products, Inc. v. Stockslager. 244 So.2d 528 (2nd DCA Fla. 1971); Bard Mfg. Co. v. Albert & Jamerson Bldg. Supply Corp., 212 So.2d 13 (4th DCA Fla. 1968); W.W. Gay Mechanical Contractors, Inc. v. Case, 275 So.2d 570 (1st DCA Fla. 1973); Babe's Plumbing, Inc. v. Maier, 194 So.2d 666 (2nd DCA Fla. 1967); and Continental H. Pks., Inc. v. Golden Triangle A. Pav. Co., 291 So.2d 49 (2nd DCA Fla. 1974).
>
> In effect they all stand for the same proposition that strict compliance with the Mechanic's Lien Law is an indispensable prerequisite to seeking affirmative relief thereunder.

Partin v. Konsler Steel Company 336 So.2nd 684, 685 (Fla. 4th DCA 1976).

In Palmer Electric Services, Inc. v. Filler., 482 So.2d 509, 510 (Fla. 2nd DCA 1986) strict compliance with this very subsection was discussed by the Second District:

> The Trial Judge below could not reconcile the holding in Alex v. Randy with the holding of this Court in Babes Plumbing v. Maier, 194 So.2d 666 (Fla. 2nd DCA 1966), and chose to adhere to our holding in Babes Plumbing. The bedrock in the Babes Plumbing holding is that the Mechanic's Lien Law is to be strictly construed in every particular and strict compliance is an indispensable prerequisite for a person seeking affirmative relief under the statute.

Only last year, this Court considered §713.16(2) and reaffirmed the "strict compliance rule" that has been the law in this state for more than 65 years:

> Home did not furnish the required statement under oath within 30 days... we agree with the instant District Court that Alex should not control. As this Court stated before, mechanic's liens are "purely creatures of statute."...
>
> We hold "that the mechanic's lien law is to be strictly construed in every particular and strict compliance is an indispensable prerequisite for persons seeking affirmative relief under the statute." Palmer, 42 So.2d at 510.

Home Electric at 110-111.

Petitioner attempts to distinguish Home Electric from the case at bar in that in Home Electric a statement was never furnished whereas in the instant case the statement was furnished, but not under oath. This is a distinction without a difference. If indeed "strict compliance" is necessary, "strict compliance" requires the statement to be sworn. It was not. To rule that a sworn statement is unnecessary would be to ignore the clear language of the statute and this Court's admonition in Home Electric.

Even if the Petitioner or the Courts chafe under the requirement that the letter be sworn, the clear language of the statute cannot be ignored:

> The Appellee's argument that "to insist on any other construction, than that contended for by it would be to embarrass the lienor and cause him to lose many jobs which he would not lose if notice were withheld until just before completion, strikes no responsive cord with us. The wisdom of the various provisions of the act are matters wholly within the orbit of legislation. We have no right to step into that field. Finding the mandate of the statute clear, it is our duty to observe it.

Scheffield-Briggs Steel Products, 63 So.2d at 926.

It is extremely important to note that this Court echoed its earlier language in this footnote in Home Electric:

> In Alex, the First District ignored the above-stated rule of construction and grafted an additional requirement onto the statute. This it could not properly do.

Home Electric at 110 n.2.

By the same token, no court could do away with the explicit statutory mandate that the statement be sworn since this is "solely in the orbit" of legislation. It is the duty of the courts to observe such a mandate. Home Electric; Scheffield-Briggs Steel Products.

The fact that Petitioner filed sworn Affidavits in the court proceedings well after the 30 day period had expired is irrelevant. Petitioner did not "strictly comply" by providing the sworn statement within 30 days after demand. Moreover, as pointed out in the Statement of Facts, the Claim of Lien filed by the Petitioner was at variance with the amount set forth in the unsworn letter provided by the Petitioner. Although there was no great disparity, there was nonetheless a disparity. To say there was "no prejudice" is incorrect. The undisputed fact is that Petitioner's Claim of Lien and the subsequent unsworn letter reflected different amounts. Moreover, there is a reason why the legislature requires various mechanic's lien statements to be sworn:

> The subcontractor or materialman is entitled to the salutary effect of this statute on one who might be tempted to make a false statement. There is a vast difference in executing a general release to the owners with no criminal penalty attached and in executing

> a sworn statement of the type required by the Mechanic's Lien Law. We therefore hold that the sworn statement required by section 84.04(3), supra, is for the protection of the subcontractor and materialman, as well as the owner, and that the owner may not waive it without subjecting the final payment to being "improperly made" under the statute.

Shaw v. Del-Mart Cabinet Co., supra, page 267.

There is little Florida case law discussing or distinguishing the test of "strict compliance" versus "substantial compliance." Research has revealed only one case which addresses the two tests, Motz Construction Corp. v. Coral Pines, Inc. 232 So.2d 441 (Fla. 4th DCA 1970). The court in Motz recognized that strict compliance is mandated unless there is a specific statutory designation requiring something less within the statute itself:

> F.S. Chapter 713, F.S.A., must be so construed and applied so as to reasonably and fairly carry out its remedial intent. We believe that all the provisions of this statute should be complied with. However, this does not mean that there must be strict compliance with each technical nicety in statements of the Claim of Lien in order to render it effectual. F.S. §713.08(4)(a), F.S.A., makes is clear that substantial compliance with the requirements as to the contents of the Claim of Lien is all that is necessary in order to be entitled to enforce such lien as against one who has not been adversely affected by an omission or error in the Claim of Lien. This is in keeping with the general intent of the Mechanic's Lien Law to protect laborers and materialmen. United States v. Griffen-Moore Lumber Co., Fla., 1953, 62 So. 2d 589.

232 So.2d at 443.

In espousing its argument that "strict compliance" should not be required in connection with §713.16(2), Petitioner only cites those cases involving Claims of Lien and Notices to Owner. In each

instance, a statutory enactment permits "substantial compliance" coupled with a showing of no prejudice by the owner. No such statutory enactment exists here.

This Court must further recognize how dangerous a precedent Petitioner is asking this Court to set: If one no longer has to "strictly comply" with §713.16(2), then does it not logically follow that "strict compliance" would be unnecessary in connection with any aspect of the Mechanic's Lien Law if all a lien claimant need to establish is lack of prejudice to the owner? In essence, Petitioner asks this Court to do discard the "strict compliance" test which has been the law in this state for over 65 years; Petitioner asks this Court to hold that even though the Mechanic's Lien Law is in derogation of the common law and purely a creature of statute, the rule of "strict compliance" can now be replaced by a lesser standard of "substantial compliance;" Petitioner asks this Court to rewrite legislation by holding that §713.16(2) should be treated the same as §713.06 and §713.08 even though the legislature failed to put "substantial compliance" language into §713.16(2) as it did with §713.06 and §713.08.

This Court must consider the catastrophic effects of such a ruling. Whereas §713.08(4)(a) permits errors in the Claim of Lien, subsection 5 of that section mandates that a Claim of Lien must be filed no later than 90 days after the final furnishing of services or materials by the lienor. Unless this section is "strictly complied with" one loses his right to a mechanic's lien. See Gray v. L.M. Penzi Tile Co., 107 So.2d 621 (Fla. 3rd DCA 1958). If this

Court changes the long standing law involving strict compliance, will it mean that if one files his Claim of Lien on the 91st, 95th or 150th day it will still be valid because the owner couldn't show prejudice?

Section 713.22(1) provides that "no lien provided by part I shall continue for a longer period than one year after the Claim of Lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction." This one year period is strictly construed and absolute. See Trushin v. Brown, 132 So.2d 357 (Fla. 3rd DCA 1961).

What if a lien claimant files suit a year and a day, or 15 months after his Claim of Lien was filed? Under Petitioner's theory, if there were "no prejudice" shown by the owner, that lawsuit would be valid and no claimant would be required to file his suit within one year. Taking Petitioner's argument one step further, would every statute in Florida in derogation of the common law also be subject to a new, lesser standard?

The absurdity of Petitioner's position is manifest. Petitioner asks this Court to (a) do away with the long standing requirement of strict compliance and (b) rewrite §713.16(2) by tossing aside the requirement of filing a sworn statement within 30 days. This Court cannot rewrite the statute. This is the job of the legislature. If, for any reason, this Court does fashion a rule of law requiring an owner to show prejudice under §713.16(2), then the same argument can and will be used to file late Claims of Lien, to file lawsuits well after the one year

period mandated by the statute and to otherwise circumvent the clear language of any portion of the Mechanic's Lien Law that does not otherwise give the courts discretion.

Petitioner argues vociferously that his client is an aggrieved, innocent party and that the Respondents herein have not fully and completely followed the Florida Mechanic's Lien Law. It should be noted in the first instance that the Respondents herein have paid the money allegedly due the Petitioner to the general contractor. More importantly, the fact that there may not be complete compliance on behalf of the Respondents-owners herein does not and cannot cure the fact that Petitioner, which has filed its Claim of Lien and is seeking affirmative relief, did not strictly comply with the statute. The fact that Respondents herein also may not have strictly complied is absolutely irrelevant inasmuch as they are not seeking affirmative relief:

> It is crucial to note here a distinction between the position of the owner in the last cited case and the position of the owner in the case under review. In the former, the owner was seeking affirmative relief, whereas Defendants herein assume a strictly defensive posture. Viewed in this perspective, John T. Wood Homes, Inc. v. Air Control Products, Inc., supra, affords no relief to the Plaintiff; indeed it confirms that strict compliance with the statute is an indispensable prerequisite to either an owner, contractor or subcontractor seeking affirmative relief under Chapter 84 Florida Statutes (1963), F.S.A. It may be said to deliver the "coupe de grace" to Plaintiff's cause and lend substance to the hoary bromide "two wrongs do not make a right".
>
> We summarize by pointing out that one moving for affirmative relief under Chapter 84, supra, must rely on the correctness of his own

> position, rather than the weakness or flaws in that of his adversary.

Babes Plumbing, Inc., 194 So.2d at 669.

Finally, the Petitioner cites various cases indicating that the Mechanic's Lien Law should be liberally construed. Properly stated, the rule of law is that "the Mechanic's Lien Law is to be liberally construed, given its narrow, specific language." Snead Construction Corp. v. Langerman, 369 So.2d 591 (Fla. 1st DCA 1978).

No matter how liberally one might prefer to construe §713.16(2), the clear, narrow, and specific language of that subsection requires a sworn statement to be filed within 30 days after demand. This Court recognized as recently as last year in Home Electric that strict compliance is an absolute necessity in connection with this subsection. No construction, liberal or otherwise, could be given to §713.16(2) that would permit any party to forward an unsworn statement within the time required. Petitioner is obviously unhappy with the fact that the statute requires a sworn statement to be filed within 30 days simply because it did not file such a statement. In order to obtain proper relief, however, the Petitioner cannot realistically ask this Court to alter the longstanding principle of law that strict compliance with the Mechanic's Lien Law is a necessity and a prerequisite to recovery. To do so would be to ignore the plain and clear language of the statute and the very purpose of requiring a sworn statement. If, however, the requirement of a statement under oath is to be dispensed with in the future, such a determination is for the legislature, not the courts.

CONCLUSION

The rule of law requiring "strict compliance" with the Mechanic's Lien Law is deeply imbedded in our system of jurisprudence. The only time something less than strict compliance is permitted is through a specific section or subsection of the Florida Mechanic's Lien Law which allows "substantial" as opposed to "strict" compliance. No such exception exists in §713.16(2).

Petitioner did not file a sworn statement within the 30 day period required by the statute. Petitioner has not strictly complied with the statute. This Court's recent ruling involving the very subsection in question requiring strict compliance is a restatement of the standard set some 65 years ago.

This Court cannot and should not rewrite the statute since this is solely in the orbit of the legislature. Moreover, to permit a showing of "substantial compliance" involving this subsection, would open a pandora's box and allow any lien claimant to dispense with the "strict compliance" rule. No owner would be secure since in every instance a lien claimant would be entitled to show that the owner was not prejudiced by a mistake. Claims could be filed after 90 days, lawsuits could be filed after a year and every other aspect of the Mechanic's Lien Law would be subject to a new subjective standard. "Strict compliance" has been a part of the Mechanic's Lien Law from the inception of the statutory scheme for the simple reason that the Mechanic's Lien Law is in derogation of the common law. It should not be abrogated.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 18 day of September, 1990 to James S. Lupino, Esquire and Frank Mendez, Esquire, STORACE, LUPINO & MIDDELTHON, 5959 Blue Lagoon Drive, Suite 100, Miami, Florida 33126.

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