SUPREME COURT CASE NO. 76,234

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.

ON PETITION FOR REVIEW FROM THE DISTRICT COURT OF APPEAL, OF FLORIDA, THIRD DISTRICT

CASE NO. 89-02872

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# INITIAL BRIEF OF PETITIONER ON THE MERITS

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(With Separate Appendix)

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## INTRODUCTION

The Petitioner, STRESSCON, a general partnership whose partners are LONE STAR FLORIDA PENNSUCO, INC. and ADELAIDE BRIGHTON CEMENT (FLORIDA), INC. (Plaintiff and Appellant below), seeks reversal of the trial court's Order and the Third District Court of Appeal's affirmation granting the Respondents', REYNALDO and VIVIANA MADIEDO (Defendants and Appellees below), Renewed Motion for Summary Judgment with instructions on remand that a summary judgment be entered on behalf of the Petitioner.

The underlying action consists of a suit for foreclosure of a mechanic's lien, as well as a separate count for quantum meruit against the owner of an improved piece of property.

All references to the Record on Appeal will be designated by the letter "R." All references to the Appendix to this Brief will be designated by the letter "A."

References to the Appendix **(A.)** are to tab number and to page, section, or paragraph as appropriate. The transcription **(TR.)** of the hearings and the depositions include the Appendix at A.___ is referenced: **(A.____TR at [page])**.

## TABLE OF CITATIONS

**STATUTES**

## STATEMENT OF THE CASE AND FACTS

This case arose as a result of the installation of prestressed concrete "Double T" beams by the Petitioner on a real property construction project owned by the Respondents. There is no dispute as to the fact that: (a) the Petitioner did install prestressed concrete materials in June, 1987 at the Respondents' construction project; (b) the value of the services and materials provided by the Petitioner; (c) the Respondents have received the benefit from the prestressed concrete products provided to their property in June, 1987; and there is no dispute to the fact that (d) the Petitioner has not been paid monies owed.

In fact, there is no dispute to the facts which concern this Appeal. The only dispute applicable to this Appeal is the application of law.

The Respondents are owners of real property legally described in Exhibit "A" to the Amended Complaint **(A.9)**. The Respondents contracted with Pentagon Construction to be the general contractor on the project. That contract required the presentation of releases or waivers of liens and a contractor's statement prior to payment if necessary to protect the owner **(A.2)**[1]. The Respondents did not enforce those provisions. That failure by the Respondents created this dispute.

A contract for the manufacture and erection of materials, to

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[1]The contract between the Respondent, Reynaldo Madiedo, and Pentagon Construction was signed and dated April 17, 1987. Article 9 of that contract requires procedures to be taken by the general contractor to insure valid title in the owner of all materials, including where necessary releases or waivers of liens.

wit; prestressed concrete "Double T" beams, was fully executed on May 19, 1987 between the Petitioner (a sub-subcontractor) and Lartran Construction (a subcontractor) **(A.1)**. Petitioner specially manufactured and installed prestressed concrete "Double T's", pursuant to said agreement.

The Petitioner commenced production of the prestressed concrete "Double T" beams on May 21, 1987 **(A.3)(A.23, page 4)**. The Petitioner first furnished said materials to the project site on June 9, 1987, and completed its work on the job on June 17, 1987 **(A.4)(A.24)**. A Notice to Owner was sent by certified mail to the Respondents on June 29, 1987, and was received and signed for on July 2, 1987, within the forty-five (45) day time limitation from commencement of the work **(A.3)(A.24)**. The Notice to Owner was received by the Respondents prior to their payment to the general contractor, Pentagon Construction, for the work performed by Stresscon **(A.33 TR at 13)** and **(A.34 TR at 24)**[2]. Once paid by the owner, Pentagon allegedly paid Lartran Construction[3], who filed bankruptcy without paying the Petitioner[4].

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[2]These facts were determined at a hearing on August 1, 1989 before the General Master on the factual issues of the case.

[3]Pentagon Construction paid Lartran a total of $90,464.00 and withheld an additional $8,343.34 as retainage **(A.34 TR at 10-13)**. The June, 1987 Lartran payment request to Pentagon included the labor and materials of Stresscon **(A.34 TR at 21)**. This sum was included in Pentagon's payment request to the owner/Respondents of June 25, 1987 **(A.34 TR at 22)**. The owner/Respondents made said payments to Pentagon **(A.34 TR at 24)** at least one week after receiving Stresscon's Notice to Owner on July 2, 1987 **(A.3)(A.33 TR at 13, 26)(A.34 TR at 24)**.

[4]Lartran filed for protection under Chapter 7 of Title 11, U.S. Code on October 23, 1987.

The owner/Respondents did not require or receive a release of lien or contractor's affidavit from either Pentagon Construction or Stresscon at any time including prior to paying Pentagon Construction, although that payment was made subsequent to receipt by the Respondents of Stresscon's Notice to Owner **(A.33 TR at 18)**. The Claim of Lien was timely filed in the office of the Clerk in Official Records Book 13410 at Page 4019 in the Public Records of Dade County, Florida **(A.4)**. The Claim of Lien was filed due to non-payment by Respondents within the time required for filing a mechanic's lien by Florida Statutes.

A letter was sent by Petitioner to Respondents on September 18, 1987 requesting payment and specifying the amounts owed **(A.5)**. Petitioner also simultaneously provided Respondents with a notice and copy of the Lien **(A.5)**.

Upon being notified of Petitioner's claim, the Respondents withheld payment of $25,000.00 to the general contractor, Pentagon Construction **(A.33 TR at 16)**[5]. Thereafter the Respondents, by and through their attorney, delivered to Petitioner by U.S. mail a request for a statement of account dated October 9, 1987, although the documents reflect that it was not received until at least October 12, 1989, **(A.6)**[6]. Petitioner responded to said request for

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[5]It was first disclosed at the oral argument before the Third District Court of Appeals that the owner released the said $25,000.00 to Pentagon Construction subsequent to Judge Simons' entry of a summary judgment order on November 14, 1989, even though an appeal was pending before the Third District Court of Appeals.

[6]A Notice of Contest dated October 9, 1987, which was a Friday, was delivered with a letter from the Respondents' attorney requesting a statement of account which was dated October 8, 1987.

a statement of account on November 9, 1987, by certified mail, to the Respondents and hand-delivery to Respondents' attorney **(A.7)**. This statement of account issued on Petitioner's letterhead and signed by Laura Kopystianski provided all the information requested and required by Florida Statute §713.16(2), however, it was not notarized. The statement of account matched the information contained in the letter of Laura Kopystianski dated September 18, 1987 which accompanied the Lien **(A.5)**, as well as the sworn to Lien itself **(A.4)**.

Laura Kopystianski thereafter and on three (3) occasions provided Respondents with Affidavits swearing to the truth and accuracy of the information in her statement of account at the time of the Affidavit, as well as on November 9, 1987, the time the statement of account was delivered **(A.8)(A.14)(A.15)**[7].

The Respondents have never challenged the truth or accuracy of the matters in the statement of account or the three (3) Affidavits, only that the timely and accurate statement of account was not notarized.

Payment, which is also called for under §713.16(2)[8], was not

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Thus the earliest day of possible receipt by mail was Monday, October 12, 1987, as the Petitioner was closed for business on Saturday, October 10, 1987, and Sunday, October 11, 1987.

[7]The three (3) Affidavits are as follows:
1. Affidavit executed on January 7, 1988, in response to a Motion to Dismiss;
2. Affidavit in Opposition of Motion for Summary Judgment executed on March 15, 1988;
3. Affidavit of Proof executed on March 16, 1988.

[8]Florida Statute 713.16(2) commences with the statement "At the time any payment is to be made by the owner . . ."

made by Respondents, and the Petitioner filed the underlying action[9].

On January 28, 1988, Respondents filed a Motion for Summary Judgment **(A.10)**. One of its grounds was the simple lack of notarization on the statement of account dated November 9, 1987. The lower court denied the motion at a hearing on April 8, 1988, in ruling that the statement of account dated November 9, 1987 substantially complied with the letter and intent of the law **(A.17)**.

On May 12, 1989 the Respondents again moved for summary judgment based in part on the same grounds as the first such motion **(A.18)**. Again the motion was denied by the Court, this time by Order dated June 14, 1989 **(A.20)**.

The lower court then ordered the parties to submit areas of dispute regarding the lien claim to the General Master for a determination of factual issues **(A.19)(A.21)**. On August 1, 1989 a trial of the factual issues regarding the lien claim was heard before General Master John Farrell. After the presentation of eight (8) witnesses, the General Master determined that: the Petitioner's work was commenced on May 21, 1987; its Notice to Owner

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[9]The original Complaint was filed on December 4, 1987. This Complaint was amended by the filing of an Amended Complaint on January 22, 1988 **(A.9)**, after a hearing on Respondents' Motion to Dismiss, which included as one of its grounds the failure of Stresscon, the Petitioner herein, to provide a statement of account under oath. The Court in its Order dated January 20, 1988, granting the Motion to Dismiss Count I of Stresscon's Complaint, specifically stated its grounds were "due to Plaintiff's failure to incorporate allegations of privity." The Court did not dismiss the Count for any alleged failure related to Florida Statute §713.16(2). The Court further denied the Motion to Dismiss as to Count II of the original Complaint. When the Amended Complaint was filed, no Motion to Dismiss was submitted by the Defendants/Respondents.

was timely filed; its work was completed on June 17, 1987; and its lien was timely filed **(A.24)**.

The Report of the General Master was submitted to the Court and approved **(A.25)**. Petitioner then moved for Summary Judgment[10], but before it was heard, the Respondents renewed their Motion for Summary Judgment for the third time, based solely upon the technical point of a lack of notary on the November 9, 1989 statement of account letter **(A.27)**. Although the court had twice denied this same motion, this time it granted the Respondents' Motion and entered Final Judgment on both the mechanic's lien claim and the quantum meruit claim, even though their motion was only directed toward the mechanic's lien claim **(A.28)**.

By entering such an Order, the lower court reversed its own previous rulings of April 22, 1987 and June 14, 1989 **(A.17)(A.20)**. The Court did so without requiring the Respondents to provide subsequent proofs from its prior Motions for Summary Judgment. By taking this inconsistent stand, the Court entered judgment against the Petitioner on both of its claims, denying it any opportunity to recover sums admittedly owed to the Petitioner[11].

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[10]Plaintiff/Petitioner moved for summary judgment two (2) days after the Court entered its Order approving the findings of the General Master **(A.24)(A.25)(A.26)**.

[11]The Respondent, Reynaldo Madiedo, in his deposition on November 3, 1988 stated (see page 16, lines 21-25; page 17, lines 1-4**(A.33)**:

**"BY MR. LUPINO:**

**Q.** Have you discussed this matter with Pentagon?
**A.** Yes.
**Q.** Have they expressed their opinion to you as to

Thereafter, on November 14, 1989 the Court entered an Order approving Respondents' request for attorneys' fees of $23,100.00 (A.30), which is a basic injustice, as the Petitioner, the truly damaged party, more fully complied with the mechanic's lien law than did the Respondents. All of this was done subsequent to a Court ordered trial before the General Master with approved findings in favor of Petitioner (A.24)(A.25).

The Petitioner filed a Notice of Appeal to the Third District Court of Appeal on December 12, 1989. The Appeal was heard on May 22, 1990, and the Third District Court of Appeals filed an Opinion on June 5, 1990.

The Opinion, although affirming the lower court's ruling, did so in a decision very favorable to the Petitioner, setting forth the fact that Stresscon had sent a timely statement of account containing all necessary information by certified mail, and that the Respondents made no showing of prejudice whatsoever. The Third District Court of Appeal said:

> "Given the breadth of the language used in Home Electric, we conclude that we have no alternative but to affirm. We certify the following as a question of great public importance:
>
> > MAY THE FAILURE TO NOTARIZE AN OTHERWISE TIMELY AND ACCURATE STATEMENT OF ACCOUNT UNDER SUBSECTION 713.16(2), FLORIDA STATUTES (1987), BE CURED BY VERIFICATION AFTER THE FACT, SO LONG AS THERE IS NO PREJUDICE TO THE OPPOSING PARTY?

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whether Stresscon should be paid or not?

A. Well, we never talked about that. Really, my opinion is it's Stresscon's money, but, you know, the guy that he paid disappeared or went into bankruptcy, whatever it is."

It is based upon this certified question of great public importance that this appeal is based. A decision of this Court in favor of Petitioner will be a stand for truth, justice and righteousness, which is the very moral fiber of our legal system. A ruling in favor of the Respondents pulls the thread which unwinds the layman's faith in American justice.

## SUMMARY OF ARGUMENT

The trial court erred in granting the Respondents' Motion for Summary Judgment to foreclose on a mechanic's lien, since the lack of a notary did not prejudice the owners' rights in any way, and the Petitioner substantially complied with Florida Statutes §713.16(2).

The mechanic's lien law is a "notice" statute. The purpose of the mechanic's lien statute is to protect laborers and materialmen that have furnished labor and services and/or materials and have not been paid for them. The purpose is accomplished by requiring that the owner pay the materialman, so long as the materialman provided the owner with notice of his work. The Petitioner complied not only with §713.16(2), but the purpose, intent and requirements of the entire mechanic's lien law. Although the Petitioner failed to provide the notary, the §713.16(2) notice was delivered timely, it provided all necessary information, said information was true and accurate and uncontested in its factual basis. As a result, the Respondents had all necessary information and could not be prejudiced. The information was thereafter sworn to in three (3) Affidavits and in live testimony as being accurate.

Clearly, the Third District Court of Appeals is absolutely correct in stating that there was no prejudice to the Respondents. The Respondents withheld payment of $25,000.00 to the general contractor, Pentagon Construction, who did not obtain and supply the owner with necessary releases of waivers of lien (A.33 TR at 8, 9,

16 and 18). The formality of the notary does not raise a justifiable issue, as the information contained in the statement of account was true, accurate and unchallenged. The impeachment of Ms. Kopystianski has never been attempted. The Respondents are merely attempting to use §713.16(2) in order to avoid paying the Petitioner based upon a technicality which did not prejudice them. There is no dispute as to whether or not Respondents received the materials, nor is there a dispute of the value of the materials. Additionally, there was a retainage withheld from Lartran Construction of approximately $8,343.34.

## ARGUMENT

### I.

**MAY THE FAILURE TO NOTARIZE AN OTHERWISE TIMELY AND ACCURATE STATEMENT OF ACCOUNT UNDER SUBSECTION 713.16(2), FLORIDA STATUTES (1987), BE CURED BY VERIFICATION AFTER THE FACT, SO LONG AS THERE IS NO PREJUDICE TO THE OPPOSING PARTY?**

The Petitioner has substantially and effectively complied with Florida Statute §713.16(2), and the Respondents suffered absolutely no prejudice. Therefore, the trial court erred in granting the summary judgment of Respondents, thus reversing its previous rulings which specifically denied Respondents' prior Motions for Summary Judgment on the same facts.

The facts of each case must be considered independently when applying the overall intent of the mechanic's lien law. In this case the Respondents were fully aware of the status of their account with the Petitioner and, thus, cannot void a valid lien by a technicality which caused no prejudice.

The purpose of the mechanic's lien statute is to protect laborers and materialmen that have furnished labor, services and/or materials and have not been paid monies owed. George J. Motz Construction Corporation v. Coral Pines, Inc., 232 So.2d 441 (Fla. 4th DCA 1970). This purpose is accomplished by the requirement of notice throughout the mechanic's lien statute. The notice provisions are designed to inform necessary parties, including the owner of the property, of the following: (1) a workman or materialman's commencement of providing materials or services to a project; (2) the failure of said workman or materialman to be paid for the materials and labor provided; (3) the types of materials

and labor provided; and (4) the sums owed for the materials and labor.

The Petitioner timely provided the Respondents with all such notices in this case. At the evidentiary hearing on the merits of this case the lower court determined that the Petitioner properly supplied a Notice to Owner prior to any payments by the owner to the general contractor on sums owed to the Petitioner. Further, the Petitioner properly and timely filed a sworn mechanic's lien which contained the same information as the statement of account **(A.4)** **(A.25)**. The mechanic's lien was also properly and timely delivered to the owner/Respondents with a letter requesting payment of sums owed to Petitioner.

As set forth in the case of **Ceco Corp. v. Goldberg**, 219 So.2d 475 (Fla. 3d DCA 1969), the Court, in construing the mechanic's lien Statute, must afford a logical construction according to the general terms and intentions of the entire act. Id. at 476. **(Emphasis added.)** The Court goes on to say that the "mechanic's lien Statute must be construed as a whole entity, and not by its separate parts, in order to arrive at a construction which avoids illogical results." Id. at 477.

Therefore, it is only logical and just that the Court, in construing the mechanic's lien law, must take a given set of facts and apply the law according to the general terms and intentions of the entire act. **Miller v. Duke**, 155 So.2d 627 (1963). That intention as previously stated by the courts, is to afford laborers and materialmen the greatest protection compatible with justice and

equity. Crane Co. v. Fine, 221 So.2d 145 (Fla. 1969). The laborer and materialmen's liens should be liberally construed to protect the laborer and the materialmen. U.S. v. Griffin-Moore Lumber Co., 62 So.2d 589 (1953). The reason for this is that the provision of labor and material to a project results in unjust enrichment of the landowner if the laborer or materialman are not given priority in enforcement of liens, and since furnishing labor and material is the very source of the laborer and materialmen's bread and butter. Hiers v. Thomas, 458 So.2d 322 (Fla. 2d DCA 1984).

In the case at bar, the Respondents attempt to avoid Petitioner's otherwise valid Claim of Lien[12] by the sheer technicality of failing to notarize the statement of account which was timely provided in accordance with Florida Statute §713.16(2).

It is further noted that the Respondents acknowledge having known of Petitioner's presence on the project **(A.33 TR at 9, 28 and 29)**; of having received the labor and materials for which Petitioner seeks payment **(A.33 TR at 9, 10, 28 and 29)**; received the Notice to Owner prior to making payment for said provision of labor and materials **(A. 33 TR at 13 and 26)(A.34 TR at 24)**; received the notice of Claim of Lien which set forth the sums owed and the materials provided **(A. 33 TR at 26)**; and further acknowledged that

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[12]At the hearing on August 1, 1989, before a Court appointed General Master the disputed issues of fact were determined in favor of Stresscon. The findings of fact held that both the Notice to Owner and Claim of Lien were properly filed.

the money was owed to Petitioner **(A.33 TR at 17, 35 and 36)**[13].

Specifically, Respondents have acknowledged knowing fully the facts their attorney requested before he requested the statement of account (see deposition of Respondent, Reynaldo Madiedo, page 28, lines 7-25 and page 29, lines 1-9) **(A.33 TR at 28 and 29)**:

> **BY MR. LUPINO:**
>
> **Q.** The date of this letter is November 9, 1987. Prior to receiving that letter, it is your testimony, is it not, that you knew Stresscon provided work to the job?
>
> **A.** Yes
>
> **Q.** Did you know what work Stresscon had provided to the job?
>
> **A.** Yes
>
> **Q.** Did you know that Stresscon was claiming that they were still owed money?
>
> **A.** Yes.
>
> **Q.** Were you aware of how much money they were claiming they were still owed?
>
> **A.** Yes.
>
> **Q.** So when you received that letter, the information in it wasn't a surprise to you, was it?
>
> **A.** No. Well--
>
> **Q.** Go ahead and read it.
>
> **A.** I am surprised because we are not ready on the other letter. Wait, let me think one minute. It was not a surprise because something-- I mean, it's hard to remember. You're talking that was so long

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[13]It should be noted that the Respondents did not require all necessary releases or waivers of lien or a contractor's Affidavit from their general contractor, which is what caused this problem in the first place **(A.33 at page 8, 9 and 18)**.

after the job and all these things started appearing.

Q. But you were aware that they had been on the job and what they had done on the job?

A. Oh, yes, like I mentioned before.

Thus, clearly the only purpose of the request for statement of account was an attempt of entrapment to void the valid Lien on a technicality.

This case is clearly distinguishable from the sole case upon which the Respondents based their renewed Motion for Summary Judgment, to wit; Home Electric of Dade County v. Gonas, 537 So.2d 590 (Fla. 3d DCA 1988), rev'd 547 So.2d 109 (Fla. 1989) wherein no statement of account was provided whatsoever. In the case bar it is acknowledged that the statement was not notarized at the time sent but it was preceded by a sworn Lien and was followed by three (3) Affidavits and the sworn testimony of the same person who signed the statement of account attesting to its truth and accuracy **(A.8)(A.14)(A.15)(A.32)**.

The Respondents were not in any manner prejudiced by the lack of notary in the properly provided statement of account[14].

Even though the Respondents were not prejudiced, Laura Kopystianski submitted not one, but three (3) Affidavits swearing to the fact that the information provided in said statement was true at the time it was provided and continued to be true at the time of

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[14]The original statement of account dated November 9, 1987 was mailed by certified mail to the owner/Petitioner. A copy of the statement was delivered by courier to Scott Silver, Esq., counsel for the owner/Respondents, on November 9, 1987.

each Affidavit **(A.8)(A.14)(A.15)**.

Clearly, the intent of the framers of the mechanic's lien law and the intent exhibited by the Courts of the State of Florida, is to protect the lienor in this instance. The trick of the trade must not prevail over the truth found in the merits of the case.

As the Third District Court of Appeals pointed out in the case of Garrido v. Markus, Winter & Spitali, Law Firm, 358 So.2d 577 (Fla. 3d DCA 1978) citing I. Epstein & Bros. v. First National Bank of Tampa, 110 So. 354 (Fla. 1926), 92 Fla. 796:

> "No longer are we concerned with the trick and technicalities of the trade. The trial of a lawsuit should be a sincere effort to arrive at the truth. It is no longer a game of chess in which the technique of the maneuver captures the prize."

Id. at 401.

This Court is requested to follow its prior line of thought which emphasized the need for true justice.

The intent of the mechanic's lien statute is notice, and substantial compliance with such notice is sufficient. Harper v. J & C Trucking & Excavating, 374 So.2d 886 (Ala Ct. App. 1978). See also Roughan v. Rogers, 199 So. 572 (Fla. 1941 rehearing denied 1941). It would be unjust to relieve the Respondents of their obligation to pay the Petitioner, when the Petitioner had provided a proper Notice to Owner, had provided materials and labor to the Respondents' project, had filed a proper Notice of Lien, had timely responded with the statement requested under §713.16(2), and where

the Respondents admitted suffering no prejudice[15].

The essence of Florida Statute §713.16(2) is to provide an owner with notice of its outstanding balance and of the materials and labor furnished. The statute specifically makes reference to the penalty for failing to furnish the statement within thirty (30) days after the demand, or furnishing of a false or fraudulent statement. Florida Statute §713.16(2) does not deprive the lienor of his lien for failing to notarize a complete, true and accurate statement which was timely delivered. The fact that it was not sworn to should not cause the Petitioner to lose its rights when the owner/Respondents received the statement of account; had known the pertinent facts; and had received various forms of notice over the preceding four (4) months. A technical deficiency should not be fatal to the Lien. **J.R. Fenton, Inc. v. Gallery 600, Inc.**, 488 So.2d 587 (Fla. 2d DCA 1986).

Thus, under substantial case law, the lower court must be reversed, as there has been absolutely no prejudice whatsoever to the Respondents in any alleged omission by the Petitioner[16]. An error or omission in a claim of lien under mechanic's lien law will not prevent foreclosure of a lien against one who has not been adversely affected by the error or omission. See **Centech-Winston Corp. v. Crown Paint, Inc.**, 294 So.2d 694 (Fla. 3d DCA 1974)

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[15]The Respondent, Reynaldo Madiedo, in his deposition stated that he was withholding $25,000.00 and that it was his opinion that it was Stresscon's money **(A.33 at 16 and 17)**.

[16]See Yell-for-Pennell, Inc. v. Joab, Inc., 243 So.2d 438 (Fla. 3d DCA 1971); and Florida New Deal Co. v. Crane Co., 194 So. 865 (1940).

[emphasis added]. Strict technical fulfillment of statutory components in a claim of lien cannot form the basis of a denial of enforcement of an otherwise valid lien, where the lienor substantially complies with the prescribed requisites and unless there is a showing of prejudice to the owner or other parties affected. Midstate Contractors, Inc. v. Halo Development Corp., 342 So.2d 1078 (Fla. 2d DCA 1977).

The courts have consistently held that the discretion of the trial court should not be exercised to deny enforcement of a materialman's lien against one who has not been adversely affected, and the discretion is granted to enforce the lien in such circumstances. Adobe Brick and Supply Co. v. Centech-Winston Corp., 270 So.2d 755 (Fla. 3d DCA 1972). See also Blinn v. Dumas, 408 So.2d 683 (Fla. 1st DCA 1982) and Yell-for-Pennell, Inc. v. Joab, Inc., 243 So.2d 438 (Fla. 3d DCA 1971).

The ruling in Home Electric of Dade County v. Gonas, 537 So.2d 590 (Fla. 3d DCA 1988), rev'd 547 So.2d 109 (Fla. 1989), cannot be held to be on point in this case. The cases which hold in favor of substantial compliance are truly more on point, as the information contained in the statement provided by the Petitioner was sufficient to inform the Respondents of the labor and materials provided and the outstanding amounts that were due. The deposition of the Respondent, Reynaldo Madiedo **(A.33)**, clearly reflects his knowledge of Stresscon's materials and services, the failure to pay Stresscon the sums owed, as well as the fact that the Respondents have not been prejudiced.

Again, there is absolutely no prejudice to the Respondents with regard to the §713.16(2) statement, and certainly the Respondents have not shown any.

As this is a case of first impression in Florida, other jurisdictions must be reviewed. In the case of **T.E. Bonner v. T.H. Barber**, 97 So.2d 793 (Ala. 1957), the Supreme Court of the State of Alabama affirmed a lower court's ruling that substantial compliance was shown with a similar lien statute, notwithstanding the failure to allege the statement was verified by oath of the person claiming the lien or of some other person having knowledge of the facts. In that case the court had to determine a party's compliance with an Alabama statute which required that any person entitled to file a lien must file a statement, in writing, with the probate judge in the county in which the property is situated, verified under oath by the person claiming the lien or of some other person having knowledge of the facts. The property owner complained that the lienor did not comply with Alabama Statutes, in that the written statement which was filed with the court was not alleged to be verified under oath by the person claiming the lien or of some other person having knowledge of the facts. The court upheld the lien.

In the instant case the statement under §713.16(2) was delivered and not contested by the Respondents as to its truth and accuracy.

In the case of **M. Marx Sons v. Cooper**, 63 So.2d 883 (La. Ct. App. 1st Cir. 1953) the Court of Appeals of Louisiana was called upon to determine the validity of the sale of property upon a valid

lien when the appraisal was not made at the time the appraisers were under oath, as required by Louisiana Code, as well as the absence of the required deputy sheriff's attesting signature to the affidavit of the appraisers. In ruling that substantial compliance had taken place, the court stated that it did not consider the oversight of the sheriff to sign the attestation as constituting such an irregularity as to make the sale one without benefit of appraisement. The court said:

> "where the court is convinced that the judgment creditor has tried to circumvent the law, and causes an unfair and unjust appraisement of the property to be made, it should hold that the sale was without benefit of appraisement, yet, on the other hand, where there has been a substantial compliance with the law in regard to the appraisement and a just and fair appraisement has been made, as in this case, then certainly the court should not hold that the sale was without benefit of appraisement for highly technical reasons, as presented in this case."

Id. at 885.

To assist the court in its evaluation of the circumstances, the Court is directed to Florida Statute §713.08(4)(a) which specifically 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 an omission or error."

Immediately preceding that statement are the requirements of the form of a claim of lien, one of which being that the claim of lien be "signed and verified by the lienor or its agent acquainted with the facts," Florida Statute §713.08(3).

Clearly, if notice is provided and the property owner has the opportunity to defend the claim of the subcontractor on the merits, the technical elements of the statute are not mandatory, so long as there is no prejudice to the owner. The key is prejudice, and the Respondents in this case were not prejudiced.

The cases which support substantial compliance as the standard intended by the framers go beyond the applicability to Florida Statute §713.08. In the case of Centex-Winston Corp. v. Crown Paint, Inc., 294 So.2d 694 (Fla. 3d DCA 1974), the court held that absent a showing by the owner that it was adversely affected by the failure of the materialman to designate the contractor to which it was providing paint or other supplies in its Notice to Owner in accordance with the mechanic's lien law, the mechanic's lien was not invalid and could be foreclosed. Id. at 695 **(emphasis added)**.

In the case of Fidelity and Deposit Co. of Maryland v. Delta Painting Corp., 529 So.2d 781 (Fla. 4th DCA 1988), a materialman's Notice to Owner under Florida Statute §713.06 was held to substantially comply with subsection (2)(a) of the section, although the individual designated in the notice of commencement was not the person to whom the notice was addressed **(emphasis added)**.

Given the narrow language, the mechanic's lien law is to be liberally construed. Snead Construction Corp. v. Langerman, 369 So.2d 591 (Fla. 1st DCA 1978).

The mechanic's lien act exists for the benefit of those who enhance realty and must be construed according to general equitable principals so as to protect the interests of that class. Ceco

Corp. v. Goldberg, 219 So.2d 475 (Fla. 3d DCA 1969). The mechanic's lien act must be construed and applied as to reasonably and fairly carry out its remedial intent to protect the laborer or materialman. George J. Motz Const. Corp. v. Coral Pines, Inc., 232 So.2d 441 (Fla. 4th DCA 1970). If doubts as to the validity of a mechanic's lien are nicely balanced, such doubts should be resolved in favor of validity of the lien. Warren v. Bill Ray Const. Co., Inc., 269 So.2d 25 (Fla. 3d DCA 1972).

The rule of common sense must apply. In construing a Statute such as §713.16(2), the courts must assume the legislature intended to accomplish a result which is reasonable and rational. Reason and ration both dictate under these circumstances that summary judgment in favor of the Respondents was error. This is especially true after a trial which determined the facts in favor of the Petitioner.

This case must be considered on its own facts and merits taking the intent of the entire mechanic's lien law into consideration. If so done, the Petitioner's Lien should be enforced.

This Appeal is a case of first impression. In determining its outcome, we must hunger and thirst for righteousness and justice.

Accordingly, the ruling of the trial court entering summary judgment in favor of the Respondents on Petitioner's mechanic's lien claim and granting Respondents' attorneys' fees and costs should be reversed.

## CONCLUSION

The Dade County Courthouse has in many of its courtrooms the inscription "We Who Labor Here Seek Only Truth." The truth in this case is that the Petitioner, Stresscon, is owed and entitled to payment of monies due. Should the Respondents prevail over the Petitioner when the Respondents have received every notice they were entitled to under the mechanic's lien law but failed to obtain necessary releases or waivers of lien or a contractor's affidavit when making payment; and should the Respondents prevail over the Petitioner, whose only error throughout the course of dealing between the parties was to omit a notarization on a document admittedly received, the contents of which were known and not disputed? If so, the very moral fiber upon which our legal system is based has unwound. Such a decision rewards he who utilizes the tricks of the trade but not the merits of the case to win. In such a case our system will have placed a non-prejudicial technicality above truth and justice.

This case goes beyond Stresscon and Reynaldo and Viviana Madiedo. This case deals with very the foundation of our legal system. The circuit court is a court of equity, and equity can only hold one decision in this case, a decision in favor of Petitioner. This Court should remand to the lower court with instructions to enter judgment in favor of Petitioner.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand-delivered this ____ day of July, 1990 to: **Lawrence Heller, Esq.**, counsel for Respondent, Gilbride, Heller & Brown, One Biscayne Tower, Suite 1946, Two South Biscayne Boulevard, Miami, Florida 33131.

Respectfully submitted,

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