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D.A. 1-4-94

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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

ALEXDEX CORPORATION, a  
Florida corporation,

Appellant,

CASE NO: 81,765

vs.

LOWER TRIBUNAL: 92-01456

NACHON ENTERPRISES, a Florida  
corporation,

FLA. BAR ID NO. 173487  
(GARDNER)

Appellee.

FLA. BAR ID NO. 163274  
(LIEBY)

\_\_\_\_\_  
D.A. 1-4-94

**AMENDED BRIEF OF AMICUS CURIAE**

**(The Real Property, Probate and Trust Law  
Section of the Florida Bar)**

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**STATEMENT OF THE CASE AND FACTS**

This Court is reviewing Nachon Enterprises, Inc. v. Alexdex Corporation, 615 So. 2d 245 (Fla. 3d DCA 1993). The Real Property, Probate and Trust Law Section of The Florida Bar (hereinafter Real Property Section) filed its Motion for Leave to Appear and to File Briefs as Amicus Curiae which was granted by this Court on June 9, 1993 provided this Court accepted jurisdiction. This Court accepted jurisdiction on September 15, 1993.

The Real Property Section is of the opinion that the lower court's decision has unequivocally cast doubt on the jurisdiction of courts to hear lien foreclosure cases and adversely impacts the stability of land titles coming through foreclosure.

The facts as presented by the Petitioner and Respondent, as reconciled by this Court, are adopted by reference herein. Further, the results of the informal survey conducted by the Real Property Section are incorporated herein by reference to the extent this Court deems them competent and relevant.

### SUMMARY OF THE ARGUMENT

Jurisdiction over the subject matter of an action is the power to adjudicate the questions presented by it. Such jurisdiction cannot be waived. Moreover, proceedings conducted without subject matter jurisdiction are absolutely void. The decision of the lower court has unequivocally cast doubt on the jurisdiction of courts to hear lien foreclosure cases. As a result, the stability of land titles coming through foreclosure is adversely impacted.

The plain meaning of Section 26.012(2)(g), Florida Statutes (1991), asserts that circuit courts shall have exclusive jurisdiction in all actions involving the title and boundaries of real property. Lien foreclosures are actions involving the title and boundaries of real property. Section 34.01(4), Florida Statutes (1991), merely provides that "county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida." Clearly, Section 26.012(2)(g) is a law of Florida restricting the application of Section 34.01(4).

The legislative intent, which is the primary factor in construing statutes, must be resolved from the language of the

statute. Simply stated, a statute is to be construed and applied in the manner enacted. Further, all statutes are presumed to be consistent with each other and enacted with knowledge of existing statutes.

A plain reading of Section 26.012(2)(g) emphasizes that the Legislature intended that circuit courts have exclusive foreclosure jurisdiction. The word "shall" meaning mandatory and "exclusive" meaning sole, supports this conclusion. The statute all also contains the phrase "title and boundaries of real property." In a foreclosure action where no personal judgment is sought, the action is totally in rem. In rem refers to litigation against property and anyone claiming an interest in it. It goes without saying that the title and boundaries of the property are affected if the action is in rem.

The circuit courts of this state have exclusive jurisdiction in foreclosure actions seeking to foreclose liens on real property because the action involves the title and boundaries of the property. Accordingly, the decision of the lower court should be reversed.

## ARGUMENT

### I.

#### THE FLORIDA CONSTITUTION AND STATUTES ENACTED PURSUANT TO IT, CONTROL THE JURISDICTION OF FLORIDA'S COURTS.

"Jurisdiction is the oxygen of an action. If present, the action is alive and the court may act[,]" so stated the Honorable John S. Rawls writing for the court in Keena v. Keena, 245 So. 2d 665, 666 (Fla. 1st DCA 1971).

Generally, jurisdiction is the power conferred on courts by the government creating them, either by the Constitution or by statutes, to take cognizance of the subject matter of litigation and the parties and things affected by the litigation. State v. Chapman, 1 So. 2d 278, 279 (Fla. 1941). This power is limited to that which is authorized by the Constitution and the statutes. Varn v. Alderman, 29 So. 323, 324 (Fla. 1900). Constitutionally conferred jurisdiction cannot be taken away by the Legislature.

Even if a court has jurisdiction over the parties to the litigation, if it lacks jurisdiction over the subject matter of a cause, then it has no jurisdiction to entertain the questions presented in the cause. See Chapman, 1 So. 2d at 281. Jurisdiction over the subject matter of an action is the

power to adjudicate the questions presented by it. Bohlinger v. Higginbotham, 70 So. 2d 911, 915 (Fla. 1954). Subject matter jurisdiction cannot be waived. See Florida National Bank v. Kassewitz, 25 So. 2d 271, 275 (Fla. 1945); Fla. R. Civ. P. 1.140(h)(2). The proceedings conducted without jurisdiction of the subject matter are absolutely void in the strictest sense of the term. See Roberts v. Seaboard Surety Co., 29 So. 2d 743, 750 (Fla. 1947).

Article V of the Constitution of the State of Florida was substantially amended effective January 1, 1973. Pertinent provisions of the revised Article V relating to jurisdiction of Circuit Courts and County Courts provide:

**Section 5. Circuit Courts. -**

- (b) **JURISDICTION.** - The circuit courts shall have original jurisdiction not vested in the county courts. . . .

**Section 6. County Courts. -**

- (b) **JURISDICTION.** - The county courts shall exercise the jurisdiction prescribed by general law. . . .

Art. V, §§ 5(b), 6(b), Fla. Const. Article V also contains temporary transition provisions for governance until the Legislature changed the statutes (i.e. general law) regarding jurisdiction of Circuit Courts and County Courts. The

potentially relevant transition provisions are as follows:

**Section 20. Schedule to Article V. -**

(c) After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article:

(3) Circuit courts . . . shall have exclusive original jurisdiction in all actions at law not cognizable by the county courts; . . . in all cases in equity . . .; and in all actions involving the titles or boundaries . . . of real property. . . .

(4) County Courts shall have original jurisdiction . . . of all actions at law in which the matter in controversy does not exceed the sum of two thousand five hundred dollars (\$2,500.00) . . . except those within the exclusive jurisdiction of the circuit courts. . . .

Art. V, § 20(c)(3), (4), Fla. Const. (emphasis added).  
Section 20, however, no longer appears to be controlling; the Legislature has changed the general law to be consistent with sections 1 through 19 of Article V. Kugeares v. Casino, Inc., 372 So. 2d 1132, 1133 (Fla. 2d DCA 1979). The "general law" is found in Chapters 34 and 26 of the Florida Statutes.

Chapter 34, Florida Statutes (1991), pertaining to County

Courts contains the following provisions:

**34.01 Jurisdiction of County Court. -**

(1) County courts shall have original jurisdiction:

(c) As to causes of action accruing:

3. On or after July 1, 1990, the actions at law in which the matter in controversy does not exceed the sum of \$10,000.00 . . . except those within the exclusive jurisdiction of the circuit courts.

4. On or after July 1, 1992, of actions at law in which the matter in controversy does not exceed the sum of \$15,000.00 . . . except those within the exclusive jurisdiction of the circuit courts.

(4) Judges of county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida.

§ 34.01(1)(c)3.-4., (4), Fla. Stat. (1991). (emphasis added).

Section 34.01(4) is the provision that is pertinent to the case sub judice that was added by Chapter 90-269, and which took effect October 1, 1990. Ch. 90-269, § 6, at 1974, Laws of Fla.

Chapter 26, Florida Statutes, pertaining to Circuit Courts was not amended by Chapter 90-269, Laws of Florida, and provides:

**26.012 Jurisdiction of Circuit Court. -**

- (2) They shall have exclusive original jurisdiction:
- (c) In all cases in equity. . . .
- (g) In all actions involving the title and boundaries of real property.

§ 26.012(2)(c), (g), Fla. Stat. (1991). (emphasis added).

Obviously, Section 26.012(2)(c) (i.e. Circuit Courts have exclusive equity jurisdiction) is patently inconsistent with Section 34.01(4) (i.e. County Courts may hear matters in equity). However, the First District Court of Appeal appears to have reconciled this inconsistency in Spradley v. Doe, 612 So. 2d 722 (Fla. 1st DCA 1993). In Spradley, the Court concluded, "We therefore construe Section 34.01(4) as granting equitable jurisdiction to county courts over matters within those courts' jurisdictional amounts, despite the existence of the patent inconsistency in Section 26.012(2)(c)." 612 So. 2d at 724. The basis for this conclusion is that Section 34.01(4) was the last expression of legislative will and should, therefore, prevail. Id. Courts seek to avoid the construction of a statute that would create unreasonable or absurd results. 49 Fla Jur 2d, Statutes § 183.



## II.

THE PLAIN MEANING OF SECTION 26.012(2)(g) ASSERTS THAT CIRCUIT COURTS SHALL HAVE EXCLUSIVE JURISDICTION IN ALL ACTIONS INVOLVING THE TITLE AND BOUNDARIES OF REAL PROPERTY. LIEN FORECLOSURES ARE ACTIONS INVOLVING THE TITLE AND BOUNDARIES OF REAL PROPERTY.

The Spradley case is not applicable in the case sub judice. Assuming a foreclosure involves title and boundaries of real property, Section 34.01(4) is not patently or irreconcilably inconsistent with Section 26.012(2)(g). Section 34.01(4) allows (i.e. "may hear") County Courts to hear equity cases "except as restricted by the laws of Florida." Section 26.012(2)(g) is obviously a "law of Florida" and a restriction which provides exclusive jurisdiction in "all actions involving title and boundaries of real property" with the Circuit Courts.

The legislative intent, which is the primary factor in construing statutes, must be resolved from the language of the statute. S.R.G. Corp. v. Department of Revenue, 365 So. 2d 687, 689 (Fla. 1978). It is the court's duty to give effect to statutory language provided the intent of the language is clear and unmistakable. Englewood Water Dist. v. Tate, 334 So. 2d 626, 628 (Fla. 2d DCA 1976). If the language of the statute is clear and admits of only one meaning, the legislature should be held to have intended what it has plainly expressed. Simply stated, a statute is to be construed and applied in the manner or form enacted. Blount

v. State, 138 So. 2, 3 (Fla. 1931). Overall, courts are entrusted with the duty to construe the law as presented by the legislature. See Florida Real Estate Com. v. McGregor, 268 So. 2d 529, 530-31 (Fla. 1972).

Also significant is the consistency of statutes. All laws are presumed to be consistent with each other. 49 Fla Jur, Statutes § 180. Courts presume that statutes are enacted with knowledge of existing statutes, Woodgate Development Corp. v. Hamilton Invest. Trust, 351 So. 2d 14, 16 (Fla. 1977), and prefer an interpretation that provides a range of operation to both rather than interpret one statute as being meaningless. Oldham v. Rooks, 361 So. 2d 140, 143 (Fla. 1978). Hence, courts have a duty to interpret a statute in a manner which harmonizes it with another statutory provision. See Palmquist v. Johnson, 41 So. 2d 313, 316 (Fla. 1949). The Spradley court was forced to harmonize two patently inconsistent statutory provisions.

Courts should also avoid a statutory interpretation "which would throw the meaning or administration of the law, or the forms of business, into hopeless confusion or uncertainty." Garcia v. Allstate Insurance Co., 327 So. 2d 784, 786 (Fla. 3d DCA 1976), cert. denied, 345 So. 2d 422 (Fla. 1976). The decision of the lower court has thrown jurisdiction involving "small foreclosures" into confusion and uncertainty.

Chapter 702, Florida Statutes, pertaining to Foreclosure of Mortgages, Agreements For Deeds, and Statutory Liens was not amended by Chapter 90-269, Laws of Florida, and provides:

**702.07. Powers of courts and judges to set aside foreclosure decrees at any time before sale.** - The circuit courts of this state, and the judges thereof, shall have jurisdiction, power, and authority to rescind, vacate, and set aside a decree of foreclosure . . . and to dismiss the foreclosure proceeding. . . .

**702.09 Definitions.** - For the purposes of § 702.07 . . . the words 'foreclosure proceedings' shall embrace every action in the circuit courts of this state wherein it is sought to foreclose a mortgage and sell the property. . . .

§§ 702.07, 702.09, Fla. Stat. (1991). Why didn't the legislature amend this statute to include county courts if it intended county courts to have foreclosure jurisdiction? Presumably the legislature did not intend for county courts to have foreclosure jurisdiction.

A close examination of Section 26.012(2)(g) is supportive. The Legislature included "shall", a word having a mandatory connotation. R. v. State, 346 So. 2d 1018, 1019 (Fla. 1977). The word "may", however, is used in Section 34.01(4). It must be assumed that the Legislature knows that the word "may", when given in its ordinary meaning, denotes a permissive term. Brooks v. Anastasia Mosquito Control Dist., 148 So. 2d 64, 66 (Fla. 1st DCA 1963). This is especially true when it is followed with "except as otherwise restricted by . . . the laws of Florida."

Consideration must also be given to the term "exclusive" as used in Section 26.012(2). Exclusive means:

Appertaining to the subject alone, not including, admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or participation; vested in one person alone. Apart from all others, without the admission of others to participation.

Black's Law Dictionary 564 (6th ed. 1990). The definition of "exclusive" reinforces and substantiates the conclusion that actions involving the title and boundaries of real property lie within the sole jurisdiction of the Circuit Courts.

The question now becomes -- what is the meaning of "title and boundaries of real property"? In the legal context, "title" refers to the subject and foundation of ownership. It represents a person's right or the extent of that person's interest; the means by which the owner is enabled to maintain possession and enjoyment; and the transfer right of the owner. 42 Fla Jur 2d, Property § 12. Florida's Marketable Record Title Act merits mention. It provides:

**712.01 Definitions. - As used in this law:**

(3) "Title transaction" means any recorded instrument or court proceeding which affects title to any estate or interest in land and which describes the land sufficiently to identify its location and boundaries.

§ 712.01, Fla. Stat. (1991). A "boundary", in the real property sense, is the making or dividing line between two parcels of land. The lines are depicted by certain

descriptive elements. For instance, monuments, running lines, area or quantity, or by maps, plats, and surveys, or by a combination thereof. 1 Fla Jur 2d, Adjoining Landowners § 16.

The Court, in Publix Super Markets, Inc. v. Cheesbro Roofing, Inc., 502 So. 2d 484, 486 (Fla. 5th DCA 1987) stated:

An action to foreclose a mechanic's lien, like an action to foreclose a mortgage on land, is an action seeking to judicially convert a lien interest (an equitable interest) against a land title to a legal title to the land and in such an action the result sought by the action requires the trial court to act directly on the title to the real property.

Owners of the property being foreclosed are necessary parties to a foreclosure action. T-R Indian River Orange Co. v. Keene, 168 So. 408. 409 (Fla. 1936). If a foreclosure action does not involve title to real property, then why is the owner a necessary or indispensable party? A necessary party is one "whose rights and interests are to be affected by a decree and whose actions with reference to the subject-matter of litigation are to be controlled by the decree. . . ." Heisler v. Florida Mortgage Title & Bonding Co., 142 So. 242, 247 (Fla. 1932). "An indispensable party is one whose interest in the subject matter of the action is such that if he is not joined, a complete and efficient determination of the equities and rights and liabilities of the other parties is not possible." Kephart v. Pickens, 271 So. 2d 163, 164 (Fla. 4th DCA 1972). Obviously, an owner is a necessary party to a foreclosure action because the action affects the title

to the owner's property -- the owner could lose it!

The legal description of the real property is required to be stated in the Complaint. Form 1.944, Florida Rules of Civil Procedure. It is also necessary to describe the property in a foreclosure decree. 37 Fla Jur 2d, Mortgages and Deeds of Trusts § 326 and Form 1.996, Florida Rules of Civil Procedure. Finally, the law provides for a Certificate of Title, containing a description of the property, after a clerk's sale of the property being foreclosed. Ch. 45, Fla. Stat. (1991). Obviously, a foreclosure involves the title and boundaries of real property.

Foreclosure actions are governed by equitable principles. 37 Fla Jur 2d, Mortgages and Deeds of Trust § 286. "All mortgages shall be foreclosed in equity". § 702.01, Fla. Stat. (1991). The purpose of a foreclosure action is to have the mortgaged property applied to the debt secured, in addition to such other relief as may be necessary to the enforcement of the debt. Georgia Casualty Co. v. O'Donnell, 147 So. 267, 268 (Fla. 1933). A suit to foreclose a mortgage on real property is to a certain extent and for certain purposes a proceeding in rem since it is primarily directed against the mortgaged property, but is more accurately termed "quasi in rem". It is partly in rem for the seizure and sale of the property, id., and partly in personam for the ascertainment of the debt of the mortgagor and the potential

obtaining of a personal judgment against him or her. Edwards v. Meyer, 130 So. 57, 59 (1930). If no personal judgment is sought, then a foreclosure action is totally in rem. Connor v. Elliot, 85 So. 164, 166 (Fla. 1920), dismissed, 254 U.S. 665 (1920). Simply stated, in rem refers to litigation against property and anyone claiming an interest in it. State v. Smith, 170 So. 440, 441 (Fla. 1936). It goes without saying that the title and boundaries of the property are affected if the action is in rem.

The decision of the lower court cites three (3) cases to support its conclusion that foreclosure cases do not involve title and boundary to real property. None of the cases cited involve "title"; rather, at most, they involve "possession". See Spector v. Old Town Key West Development, Ltd., 567 So. 2d 1017 (Fla. 3d DCA 1990); Kugeares v. Casino, Inc., 372 So. 2d 1132 (Fla. 2d DCA 1979); and Williams v. Gund, 334 So. 2d 314 (Fla. 2d DCA 1976).

Spector was an action for declaratory relief and for appointment of a receiver. The Court, in Spector, said:

Second, and far more important it is apparent that, although the real estate owned by the partnership may be involved tangentially in the case -- like that owned by the "partners" of a marriage which need not be dissolved where the parties' realty is located, . . . -- no action for a receiver directly affects the title to the property.

567 So. 2d at 1018. It is clear that the complaint did not seek a sale of the real property in Spector. It was not a

case involving the title and boundaries to property.

Kugeares involved an action brought by a landlord seeking possession of leased premises. 372 So. 2d at 1133. As the opinion shows, there was an express statutory grant of authority to the County Court in Florida Statute 34.011(2) (1977) for "proceedings relating to the right of possession of real property." There was no action brought to obtain title to the leased premises in Kugeares.

Williams was an action for damages and for detainer or wrongful possession. Again, the complaint in Williams did not seek a sale of the property. 334 So. 2d at 314-315. There was no action affecting the title and boundaries to the property.

There should be no argument that the three cases cited in the opinion under review are not actions affecting the title and boundaries to real property. There is a vast difference between the actions cited in the opinion and an action seeking foreclosure of a lien on real property.

Finally, Section 34.01(1)(c), Florida Statutes (1991) makes reference to "the matter in controversy" as a pertinent part of determining subject matter jurisdiction. This issue is important if this Court is considering County Courts as having jurisdiction to hear "small foreclosures". Section 34.01(4), presumably when referring to "the matter in controversy", uses the term "jurisdictional amount".



(emphasis added). It also uses the word "sum". In a lien foreclosure case, "the matter in controversy" could be (1) the amount of money due under the obligation secured by the lien; (2) the total of all amounts secured by all liens encumbering the property; (3) the value of the property encumbered by the lien; or (4) the total of all obligations secured by liens that will be affected by the foreclosure and any "equity value" that the owner may have.

Except for the Legislature's choice of the words "amount" and "sum", Florida law is mostly silent on how "matter in controversy" is defined for lien foreclosure purposes. Vol. 13, Fla Jur 2d, Courts and Judges § 93, provides, "The amount in controversy or the value of the property involved in an action can be a controlling factor in determining jurisdiction of the subject matter." (emphasis added). The citation of authority given for this statement doesn't support the statement. See State v. Amidon, 68 So. 2d 403 (Fla. 1953). Obviously, if foreclosure cases can be in either county courts or circuit courts depending on the "matter in controversy", then it is extremely important to know what "matter in controversy" means as it relates to lien foreclosure cases. Is it "amount", "sum", or "value", or all of them? The concept of "matter in controversy" seemingly arises out of actions at law in which monetary damages are sought. It appears that "amount" and "value" as used by the authors of

Fla Jur 2d contemplates value of property which is damaged for which compensation is sought - not value of property in equity actions. Prior to October 1, 1990, "matter in controversy" had no significance to equity cases. Only Circuit Courts could hear equity cases and the monetary dividing line between the Courts only applied in actions at law. Now, in light of the decision being reviewed by this Court, it merits discussion, and if this Court is considering affirming the holding of the Fourth District, it should be carefully considered.

CONCLUSION

The Circuit Courts of this State have exclusive jurisdiction in foreclosure actions seeking to foreclose liens on real property because the action involves the title and boundaries of the property. The decision of the lower court should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to the following, this 12th day of October, 1993.

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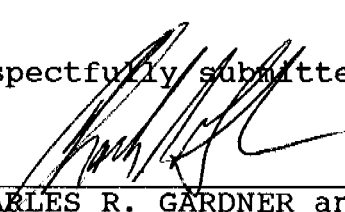
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