

027  
D.A. 1-4-93

**FILED**  
SID J. WHITE  
OCT 7 1993  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

---

CASE NO.: 81,765

---

ALEXDEX CORPORATION, a  
Florida corporation,

Petitioner,

vs.

NACHON ENTERPRISES, a  
Florida corporation,

Respondent.

---

AMICUS CURIAE BRIEF

---

BARRY KALMANSON, Esquire  
Florida Bar No. 0814199  
BARRY KALMANSON  
PROFESSIONAL ASSOCIATION  
135 North Magnolia Avenue  
Orlando, Florida 32801  
407/843-0901  
Attorney for Aluminum Association  
of Florida, Inc.  
and  
National Association of Credit  
Management of Florida, Inc.

INDEX TO BRIEF OF APPELLANT

	<u>Page</u>
Table of Authorities	ii
Summary of Argument	1
Argument:	2
CIRCUIT COURTS HAVE EXCLUSIVE ORIGINAL JURISDICTION IN ALL CONSTRUCTION LIEN FORECLOSURE ACTIONS WITHOUT REGARD TO THE AMOUNT IN CONTROVERSY.	
Conclusion	7
Certificate of Service	8

TABLE OF AUTHORITIES

<u>Cases Cited:</u>	<u>Page</u>
<u>Moore v. Leisure Pool Service, Inc.,</u> 412 So.2d 392 (Fla. 5th DCA 1982)	6
<u>Nachon Enterprises, Inc. v. Alexdex Corp.,</u> 615 So.2d 245 (Fla. 3d DCA 1993)	2, 4, 5, 7
<u>Publix Super Markets, Inc. v. Cheesbro Roofing,</u> <u>Inc.,</u> 502 So.2d 484 (5th DCA 1987)	2, 3, 6
 <u>Statutes Cited:</u>	
§26.012, Florida Statutes	2, 4, 6, 7
§34.01, Florida Statutes (1991) (as amended pursuant to Chapter 90.269, Laws of Florida)	2, 3, 4
§45.031(4), Florida Statutes	6
§713.24(3), Florida Statutes	5
Chapter 702, Florida Statutes	5, 6
 <u>Constitution Provisions Cited:</u>	
Article V	2, 3, 4, 5, 7

Summary of Argument

Circuit Courts have exclusive original jurisdiction in all construction lien foreclosure actions without regard to the amount in controversy.

## Argument

CIRCUIT COURTS HAVE EXCLUSIVE ORIGINAL JURISDICTION IN ALL CONSTRUCTION LIEN FORECLOSURE ACTIONS WITHOUT REGARD TO THE AMOUNT IN CONTROVERSY.

1. The Third District Court of Appeal wrongly decided the case of Nachon Enterprises, Inc. v. Alexdex Corp., 615 So.2d 245 (Fla. 3d DCA 1993). The Nachon decision pertains to subject matter jurisdiction of foreclosure proceedings when the "amount involved" is within the monetary jurisdictional limits of the county court. The Third District, in interpreting Section 34.01(4), Florida Statutes (1991) (as amended pursuant to Chapter 90.269, Laws of Florida), wrongly concluded that the county courts have jurisdiction to hear foreclosure proceedings in which the amount in controversy does not exceed \$15,000.00.

2. The above-referenced Third District opinion is in direct conflict with the previous Fifth District decision of Publix Super Markets, Inc. v. Cheesbro Roofing, Inc., 502 So.2d 484 (5th DCA 1987), in that the Publix case correctly held that construction liens require the court to act directly on the title to real property. In the Publix decision, this court ruled that:

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 real property (emphasis added). Id. at 486.

Pursuant to Section 26.012(2)(g), Florida Statutes, and Article V of the Constitution of the State of Florida, circuit courts have exclusive original jurisdiction "in all actions involving the title

and boundaries of real property." The Third District Court of Appeal should have relied on the Fifth District Publix decision; and, if it had done so, this case would not be before this court.

3. Article V of the Constitution of the State of Florida became effective on January 1, 1973. Provisions of Article V include:

**Section 5. Circuit Courts. -**

- (b) JURISDICTION. - The circuit courts shall have original jurisdiction not vested in the county courts, . . . Jurisdiction of the circuit court shall be uniform throughout the state. . . .

**Section 6. County Courts. -**

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

**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.... (Emphasis Added).

4. Chapter 34, Florida Statutes, as amended by Chapter 90-269, Laws of Florida, 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, of 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. (Emphasis added).

5. 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.

6. If Florida Statute 34.01(4) is interpreted to govern actions involving the title to real property and to create exclusive or concurrent jurisdiction in county courts on foreclosures in which the amount in controversy does not exceed \$15,000.00, then the result of Chapter 90-269, Laws of Florida, is that it is unconstitutional as it directly violates Section 20, Schedule to Article V, of the Florida Constitution. The Third District Nachon decision is unconstitutional because it completely reverses the jurisdiction of the courts as required by the Florida

Constitution. Article V of the Florida Constitution requires that circuit courts exercise exclusive original jurisdiction is all lien foreclosure cases because they affect title to real property. The holding of the Third District Nachon decision is unconstitutional because it purports to take exclusive original jurisdiction away from the circuit court and give such jurisdiction to the county court. There is no evidence this is the result intended by the Florida legislature, and the Nachon court had no jurisdiction or authority to alter the Florida Constitution by judicial decree.

7. Section 713.24(3), Florida Statutes, pertains to actions on surety bonds or cash bonds posted with the county comptroller transferring construction liens to security, and requires that said actions be brought "in the Circuit Court of the county where such security is deposited," regardless of the amount in controversy. Said section more fully provides:

Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security (Emphasis added).

8. 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 Section 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. . . .

9. The opinion of the Third District incorrectly states that "the foreclosure action at issue here is not an action 'involving the title and boundaries of real property.'" The Aluminum Association of Florida, Inc. and The National Association of Credit Management of Florida, Inc. contend, as held by the Fifth District Court of Appeal in the Publix decision, that construction lien foreclosure actions do, in fact, involve the title and boundaries of real property such that "exclusive" jurisdiction for those actions is reserved unto the circuit court pursuant to Florida Statute 26.012(2)(g). If not, then why is the owner of the property a necessary party to the foreclosure action, as held by this court in Moore v. Leisure Pool Service, Inc., 412 So.2d 392 (Fla. 5th DCA 1982)? If not, then why is a Certificate of Title issued at the conclusion of the foreclosure proceeding, pursuant to Section 45.031(4), Florida Statutes?

### Conclusion

Circuit Courts have exclusive original jurisdiction in all construction lien foreclosure actions without regard to the amount in controversy, pursuant to §26.012(2)(g), Florida Statutes, and Article V of the Constitution of the State of Florida. Therefore, The Aluminum Association of Florida, Inc. and The National Association of Credit Management of Florida, Inc. request that this Honorable Court reverse the decision in Nachon Enterprises, Inc. v. Alexdex Corp., 615 So.2d 245 (Fla. 3d DCA 1993), and rule that circuit courts have exclusive original jurisdiction in all construction lien foreclosure actions.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by U.S. Mail, this 5th day of October, 1993, to counsel of record as shown on the attached Service List.

BARRY KALMANSON  
PROFESSIONAL ASSOCIATION

By: 

BARRY KALMANSON, ESQUIRE  
Florida Bar No. 0814199  
135 North Magnolia Avenue  
Orlando, Florida 32801  
407/843-0901  
Attorney for Aluminum  
Association of Florida, Inc.  
and  
National Association of Credit  
Management of Florida, Inc.

## Service List

Richard J. Burton, Esquire  
1815 Griffin Road, Suite 403  
Dania, Florida 33004  
Counsel for Petitioner

Gerald B. Fincke, Esquire  
2401 E. Graves Avenue, Suite 24  
Orange City, Florida 32763

Charles R. Gardner, Esquire  
1300 Thomaswood Drive  
Tallahassee, Florida 32312  
Counsel for the Real Property,  
Probate and Trust Law Section  
of the Florida Bar

Larry R. Leiby, Esquire  
290 N.W. 165th Street, Penthouse 2  
Miami, Florida 33169  
Counsel for the Real Property,  
Probate and Trust Law Section  
of the Florida Bar

Jerry R. Linscott, Esquire  
Post Office Box 112  
Orlando, Florida 32802

Deborah Marks, Esquire  
12555 Biscayne Blvd., Suite 993  
North Miami, Florida 33181  
Counsel for Petitioner

Pedro F. Martel, Esquire  
717 Ponce de Leon Blvd., Suite 319  
Coral Gables, Florida 33134  
Counsel for Respondent

William D. Palmer, Esquire  
Post Office Box 1171  
Orlando, Florida 32802  
Counsel for The Family Law  
Section of the Florida Bar