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IN THE SUPREME COURT OF FLORIDA

CASE NO.: 81,765

ALEXDEX CORPORATION, a
Florida corporation,

Petitioner,

vs.

NACHON ENTERPRISES, a
Florida corporation,

Respondent.

AMENDED AMICUS CURIAE BRIEF
ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

This Court exercised its discretionary jurisdiction to review the Third District Court of Appeal's decision in Nachon Enterprises, Inc. v. Alexdex Corporation, 615 So.2d 245 (Fla. 3d DCA 1993) on September 15, 1993. Pursuant to the Court's August 20, 1993 Order, the American Resort Development Association ("ARDA") files this brief as Amicus Curiae.

ARDA is a trade association representing the resort and vacation ownership industry. Our 800 members include roughly all the timeshare developers nationwide. ARDA is dedicated to the resort industry and educating its members, the public, and state and federal legislatures, by promoting responsible and effective timeshare regulation.

ARDA asserts that the Third District's decision, as recently affirmed in its decision in Brooks v. Ocean Village Condominium Association, Inc., 18 FLW D 2211 (Fla. 3d DCA October 12, 1993), has caused a conflict between the language of the statutes granting circuit court jurisdiction (Chapter 26, Florida Statutes) and county court jurisdiction (Chapter 34, Florida Statutes), by finding that exclusive jurisdiction for foreclosure actions resides with the county court. This decision has caused tremendous confusion for ARDA members, uncertain of which court, circuit or county, to file foreclosure actions in. This uncertainty has

significantly and adversely impacted ARDA's members in the operation of their business.

A finding of exclusive jurisdiction in either circuit or county court could result in the voiding of three years of judgments for lack of subject matter jurisdiction. These void judgments could require reforeclosure.

Each year ARDA's members file large numbers of mortgage or claim of lien foreclosure actions in amounts below \$15,000.00. Subsequent to retaking title to a timeshare interest by foreclosure, ARDA's members offer to sell these timeshare interests to the general public. However, title insurance companies are unwilling to issue title insurance until this Court has made a determination as to the proper court to hear foreclosure matters. Without title insurance, a timeshare interest is virtually unsalable.

ARDA hereby adopts the facts as presented by Nachon Enterprises, Inc. and Alexdex Corporation, the survey filed as Exhibit "A" to the Real Property, Probate and Trust Section of the Florida Bar's Motion for Leave to Appear and File a Brief as Amicus Curiae filed May 19, 1993, and the Motion for Expedited Decision as Amicus Curiae made by Ocean East Resort Club Association, Inc.

SUMMARY OF ARGUMENT

This Court faces the unappetizing prospect of voiding three years of foreclosure judgments if it holds that either the circuit or county courts have exclusive jurisdiction to adjudicate foreclosure actions where the amount in controversy is less than \$15,000.00. Not only could this immediately cloud the title of Florida real property for countless owners, but it could flood the already overburdened Florida courts with three years worth of re-foreclosure actions.

ARDA asserts that the jurisdictional scheme for equitable actions where the amount in controversy is less than \$15,000.00 provides for concurrent jurisdiction. Since an action to foreclose a mortgage or a claim of lien for unpaid assessments is only tangentially related to real property, and only if the real property is needed to satisfy the judgment, foreclosure actions do not involve the title and boundaries to real property. Thus, both circuit and county courts may adjudicate foreclosure actions concurrently.

Should this Court find for Alexdex Corporation, and determine that the Circuit Court has exclusive jurisdiction, this Court must be prepared to void three years of foreclosure judgments. However, pursuant to the Florida Statutes there exists jurisdictional authority over equity matters for both courts. The county courts'

exercise of jurisdiction over past foreclosure matters could be adjudged a mere erroneous exercise of jurisdiction as opposed to a usurpation of power. Under Florida law, these judgments would only be subject to reversal on appeal.

Additionally, ARDA asserts that "Amount in Controversy" should be defined as the principal and accrued interest amount of the foreclosing mortgage or claim of lien. Without a definition that permits value to be determined with relative certainty, this term could be the subject of endless battles between experts attempting to ascertain value.

A R G U M E N T

I. CIRCUIT COURTS AND COUNTY COURTS HAVE CON-
CURRENT JURISDICTION IN FORECLOSURE ACTIONS
WITHIN THE COUNTY COURTS JURISDICTIONAL
AMOUNT.

The decision in Nachon Enterprises Inc. v. Alexdex Corporations, 615 So.2d 245 (Fla. 3d DCA 1993), poses a great threat to the effective regulation of the timeshare industry. This decision has caused confusion and delay for ARDA's members seeking to foreclose parties who have failed to properly pay mortgages and assessments. Effective October 1, 1990, the legislature enacted Ch. 90-269, Laws of Florida, to allow county court judges to "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."¹

Unfortunately, the legislature failed to amend section 26.012 by deleting the provisions therein, which stated that the circuit courts have exclusive equitable jurisdiction. Thus, because the grant of equity jurisdiction to county courts in section 34.01(4) is restricted by section 26.012(2)(c), vesting equitable matters exclusively in the circuit courts, a dispute has arisen as to the proper court for the adjudication of equity matters where the "Amount in Controversy" is below \$15,000.

¹ §34.01(4), Florida Statutes (1991); Ch. 90-269, § 1, at 1973, Laws of Florida.

There are approximately 780,810 timeshare unit weeks in Florida. In Lee County alone there are 60,000 timeshare unit weeks. All Lee County foreclosure actions with an Amount in Controversy below \$15,000 must be filed in county court. If only one percent of the 60,200 timeshare unit weeks went into foreclosure over the last three years, over 600 void judgments would result if circuit courts are held to have exclusive jurisdiction.

There are significantly more timeshare unit weeks located outside of those county's that require foreclosures to be filed in county court. If the Supreme Court affirms the Nachon decision and determines that these foreclosures are within the exclusive jurisdiction of the county courts, then significantly more than 600 foreclosure judgments will become void. In either case, the Florida courts are faced with having to hear hundreds of actions to reforeclose these void judgments or quiet title.

1. The intent of the Florida Legislature in passing Section 34.01 was to grant concurrent jurisdiction to both circuit and county courts to hear foreclosure actions within the county court's jurisdictional amount.

Florida's legislature has granted circuit courts the exclusive original jurisdiction in all equity matters.² The legislature has

² **26.012 Jurisdiction of Circuit Court. -**

- (2) They shall have exclusive original jurisdiction:
 - (c) In all cases in equity . . .

also granted county courts the jurisdiction in all equity matters within that court's jurisdictional amount.³ While the statutory language in Section 34.01(4) invests permissive equity jurisdiction in county courts, Section 26.012(2)(c) mandates equity jurisdiction in the circuit courts. This purported conflict can be resolved by rules of statutory construction.

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). Where the statutory language is clear and unmistakable, it is the court's duty to give effect to statutory language. 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. Blount v. State, 138 So. 2, 3 (Fla. 1931). Overall, courts are entrusted with the duty

* * *

(g) In all actions involving the title and boundaries of real property.

³ **34.01 Jurisdiction of County Courts. -**

* * * *

(4) Judges of the 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.

to construe the law as presented by the legislature. See Florida Real Estate Com. v. McGregor, 268 So. 2d 529, 530-31 (Fla. 1972).

A basic cannon of statutory construction is that all laws are presumed to be consistent with each other. 49 Fla. Jur., Statutes § 180. The legislature is presumed to be aware of prior laws in the enactment of a subsequent law. See Carcaise v. Durden, 382 So. 2d 1236 (Fla. 5th DCA 1980). Another controlling maxim of statutory construction is that the last expression of the legislature prevails. See State v. Parsons, 569 So. 2d 437, 438 (Fla. 1990). Where a legislative act is conflicting or inconsistent, but can be fairly construed as to make it fairly enforceable, the courts should defer to the legislature and give it that effect rather than declare the act inoperative or void. See Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693, 697 (Fla. 1969). 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).

Applying these cannons of statutory interpretation to the jurisdictional statutes under review, Section 34.01(4) and Section 26.012(2)(c) can be reconciled and given effect by a finding of concurrent jurisdiction, thereby, allowing both circuit and county courts to hear lien foreclosure actions within the county court's jurisdictional amount. In this way, the Supreme

Court would defer to the legislature and give both statutes effect, rather than declaring either statute inoperative or void. Writing for the majority in State v. Sullivan, Justice Terrell noted that:

"Jurisdiction...is not like a grant of property which cannot have several owners at the same time. Two or more courts may have concurrent jurisdiction of the same subject matter..."

State v. Sullivan, 116 So. 255, 259 (Fla. 1928).

Both Sections 26.012(2)(c) and 34.01(4) vest equity jurisdiction in circuit and county courts. There can be concurrent jurisdiction between the two courts, in equity matters not in excess of the county court jurisdictional amount. Practically, this means that the court in which the action is filed first, shall have jurisdiction. Where the amount involved exceeds this jurisdictional amount, then the jurisdiction of the circuit court becomes exclusive.

2. A foreclosure is not an action involving title and therefore not within the exclusive purview of the circuit court.

The Third District's decision in Nachon declares that pursuant to section 34.01(4), jurisdiction to hear equity actions now includes the county court when the amount of the lien is less than the jurisdictional amount of the county court. In their holding, the court expresses that construction lien foreclosure actions are not actions to quiet title, which are within the exclusive purview

of the circuit courts, and are not actions "involving the title and boundaries of real property."⁴ Nachon Enterprises Inc. v. Alexdex Corporations, 615 So.2d 245, 247 (Fla. 3d DCA 1993).

A construction lien foreclosure action is a statutory action created by the legislature which allows a lienor even without privity with the owner to encumber the real property improved by the services, labor and/or materials of said lienor in order to secure the payment to lienor of said services, labor and/or materials. Therefore, a construction lien foreclosure action is not different from an action to collect monies for services rendered and/or goods sold and delivered which does not involve title to the land. The holder of the lien does not aspire to the real property title, he only wishes to be paid the neglected debt. Therefore, in matters in equity, such as a construction lien, the county court can decide cases within their jurisdictional amount.

ARDA agrees with the Nachon Court and Respondent in that foreclosures do not invoke the title and boundaries to real property. Pursuant to section 34.01(4), a court of competent jurisdiction to hear foreclosure actions, which are equitable in nature, now includes the county court. See Spradley v. Doe, 612 So. 2d 722

⁴ **26.012 Jurisdiction of Circuit Court. -**

(2) They shall have exclusive original jurisdiction:

* * *

(g) In all actions involving the title and boundaries of real property. (Emphasis added).

(Fla. 1st DCA 1993). Although the real estate owned by the debtor in a construction lien foreclosure action, may be affected tangentially, that which is actually in controversy is the squandered debt. See St. Laurent v. Resort Marketing Assocs., Inc, 399 So.2d 362 (Fla. 2d DCA 1981); Royal v. Parado, 462 So. 2d 849 (Fla. 1st DCA 1985); Coon v. Abner, 246 So.2d 143 (Fla. 3d DCA 1971). To hold otherwise would be to argue that every judgment that could be subsequently recorded as a lien on real property affected the title and boundaries of real property. Then the monies owed for services, labor and/or materials are at issue, the case is properly heard by a county court, if within the court's jurisdictional amount.

The clear intent of the legislature was to expand county court jurisdiction over certain specified equitable matters. This intent is reflected not only by the express language employed in section 34.01(4), but as well by the title to Chapter 90-269, Laws of Florida. Section 34.01(4) is clearly consistent with the expressed legislative purpose, and because it is the last expression of legislative intent should succeed. Spradley v. Doe, 612 So. 2d 722 (Fla. 1st DCA 1993). Section 34.01(4) and Section 26.012(2) should be construed as granting concurrent jurisdiction to both circuit and county courts over construction lien foreclosure matters within the county court's jurisdictional amount.

**II. A FINAL JUDGMENT ENTERED BY A COURT LATER
FOUND TO HAVE CONFLICTING SUBJECT MATTER
JURISDICTION IS NOT VOID.**

If the Supreme Court accepts the Petitioners position that all actions to foreclose a construction lien are the exclusive jurisdiction of the circuit court, all final judgments entered by county court on lien foreclosure actions could be adjudicated void. The practical result would be to void three years of county court final foreclosure judgments requiring the circuit court to relitigate these actions. Similarly, if the Supreme Court accepts the Respondent's position that all foreclosure actions within the county court's jurisdictional amount are the original jurisdiction of the county court, all final judgments entered by the circuit court on lien foreclosure actions, less than the county court jurisdictional amount, could be adjudged void. Again, the practical result would be to void three years of circuit court final foreclosure judgments requiring the county court to re-litigate these actions. Fortunately, Florida law recognizes the difference between an erroneous exercise of jurisdiction and a complete usurpation of power.

The term "jurisdiction", as used in Florida statutes, means jurisdiction as to subject matter only. See Malone v. Meres, 109 So. 677, 686 (Fla. 1926). The jurisdiction of the circuit and county courts is respectively defined by §§ 26.012 and 34.01, Florida Statutes. A judgment or order entered by a circuit or

county court over a subject not defined in its corresponding statute, is deemed null and void for want of subject matter jurisdiction. However, the situation presented by this case is not that the statutes fail to provide jurisdiction, but instead the statutes provide conflicting jurisdiction. This being the case, assuming arguendo that jurisdiction is found to lie with either court exclusively, decisions by the other court could be perceived as an "erroneous exercise of subject matter jurisdiction", rather than void, as not having jurisdiction.

Judgments of courts are immune from collateral attack unless found to be void. Judgments based on mere "erroneous exercise of jurisdiction" are not void, but are subject to res judicata and are reversible on appeal. The United States District Court has distinguished a void judgment from a judgment based on an erroneous exercise of jurisdiction. Hobbs v. United States Office of Personnel, 485 F.Supp. 456 (M.D. Fla. 1980). In Hobbs, the plaintiff collaterally attacked the property settlement decree of the Superior Court of California, declaring part of plaintiff's pension benefits community property in a divorce proceeding, alleging that the Superior Court of California exceeded its authority in assuming jurisdiction over plaintiff's pension benefits. Id. at 457. In Hobbs, the court held:

A void judgment is one which from the beginning was a complete nullity and without any legal effect.... However a void judgment

must be distinguished from a judgment based on an erroneous exercise of jurisdiction. A court has the power to determine the extent of its own jurisdiction and only when there is a clear usurpation of power will the decision be considered void.... A judgment which is not void, even though it may be based on an erroneous exercise of jurisdiction, is subject to res judicata and can be reviewed only by direct appeal.

Id. at 458. Accord Hooks v. Hooks, 711 F.2d 93 (6th Cir. 1985).

The Hobbs court concluded that the judgment of the Superior Court of California declaring plaintiff's retirement benefits community property was not a clear usurpation of power. The Hobbs court then held that the judgment is res judicata and was reviewable only on appeal. Hobbs, 485 F.2d at 458.

In Florida, the legislature has granted circuit courts the exclusive original jurisdiction in all equity matters §26.012(2)(c), Fla. Stat., and the legislature has also granted county courts with jurisdiction in all equity matters within that court's jurisdictional amount. §34.01(4) Fla. Stat. Based on the rationale in Hobbs, since there exists a jurisdictional authority over equity matters for both courts, regardless of which court is eventually granted exclusive jurisdiction, if done so, the other court's exercise of jurisdiction over foreclosure matters in the past could be adjudged a mere erroneous exercise of jurisdiction, and not a usurpation of power. Thus, instead of making past final

judgments void, these judgments would only be subject to res judicata and reversible on appeal.

III. FOR SUBJECT MATTER JURISDICTIONAL PURPOSES IN FORECLOSURE ACTIONS THE "AMOUNT IN CONTROVERSY" IS THE PRINCIPAL AND ACCRUED INTEREST AMOUNT OF THE FORECLOSING MORTGAGE OR CLAIM OF LIEN.

The legislature has amended section 34.01 over time to increase the jurisdictional amount of the county courts.⁵ The most recent change, Ch. 90-269, §1, at 1972, Laws of Florida, increased the county court's original jurisdiction to "actions at law which the matter in controversy does not exceed the sum of \$15,000,..." §34.01(c)4., Fla. Stat. The Real Property, Probate and Trust Law Section of the Florida Bar, correctly alerts this Court to the significance the term "amount in controversy" plays in determining subject matter jurisdiction. However, the Real Property Section over complicates this issue.

⁵ **34.01 Jurisdiction of county court. -**

* * *

(c) As to causes of action accruing:

1. Before July 1, 1980, all actions at law in which the matter in controversy does not exceed the sum of \$2,500,...
2. On or after July 1, 1980 ... \$5,000,...
3. On or after July 1, 1990 ... \$10,000,...
4. On or after July 1, 1992 ... \$15,000,...

The Supreme Court established a twofold test for "amount in controversy" jurisdiction in White v. Marine Transport Lines, Inc.:

In the first instance, the good faith demand of the plaintiff at the time of instituting suit determines the ability of the particular court to entertain the action. However, notwithstanding the bona fides of the plaintiff's demand at the time of institution of suit, as a matter of judicial power the county court is precluded from entering a judgment for damages in excess of its mandated jurisdiction.

372 So. 2d 81, 84 (Fla. 1979). The jurisdiction is dependent upon the amount claimed in good faith by the plaintiff and put in controversy. Richter Jewelry Co. v. Harrison, 147 Fla. 732, 3 So. 2d 387 (Fla. 1941). Where the plaintiff's good faith claim is within its jurisdictional amount, the county court maintains subject matter jurisdiction. Sullivan v. Nova University, 613 So. 2d 597 (Fla. 5th DCA 1993).

This standard was successfully applied very recently in Brooks v. Ocean Village Condominium Association, 18 FLW D 2211 (Fla. 3d DCA October 12, 1993). Ocean Village sought to foreclose its claim of lien for condominium assessments of \$3,984.44. Knowing that the real property value of the condominium to be approximately \$50,000, the court concluded that the county court had proper jurisdiction because the plaintiff's good faith amount in controversy was below the \$15,000 county court jurisdictional amount.

Applying the White test to foreclosure actions, the good faith demand of the plaintiff would be the current principal balance,

accrued interest, and assessments owed at the time of the filing of the foreclosure. It is only if the "amount in controversy" is limited to the principal balance of the mortgage, accrued interest and assessments owed to the foreclosing mortgagee that one can, with any certainty, determine whether a filing in county court is appropriate. To force the court to determine jurisdiction by calculating the value of the real property would create endless battles between experts attempting to ascertain value.

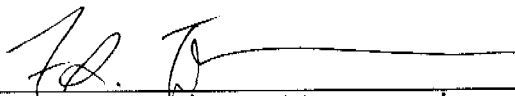
CONCLUSION

Based on the cannons of statutory construction and the potential for voiding three years of previously final judgments, a finding of concurrent jurisdiction gives effect to the intent of the legislature. The lower court's decision, in result only, should be affirmed, but the holding modified to recognize that the rationale for the result was not exclusive county court jurisdiction, but concurrent jurisdiction.

DATED this 4th day of November, 1993.

Respectfully submitted

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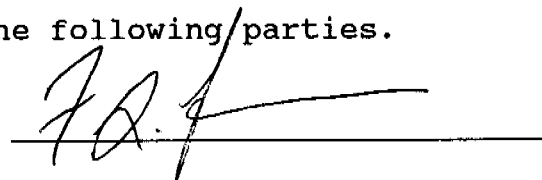
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to the following, this 4th day of November, 1993, to the following parties.



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