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O.A. 1-4-99

# In the Supreme Court of Florida

Case No. 81,765  
DCA No. 92-01456,  
Third District  
L.T. No. 92-3925 CA 27 DADE  
Honorable S. Peter Capua

ALEXDEX CORPORATION, a  
Florida Corporation,

Petitioner,

vs.

NACHON ENTERPRISES, INC.,  
a Florida Corporation,

Respondent.

**FILED**  
SID J. WHITE  
OCT 11 1997  
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By \_\_\_\_\_  
Chief Deputy Clerk

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## PETITIONER'S MAIN BRIEF

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## INTRODUCTION

This is an appeal from a determination made by the Third District Court of Appeal which reversed the discharge of a mechanics lien. The Third District held that Respondent had properly commenced an action to foreclose a \$4,100 lien within the statutory time period, by filing a foreclosure complaint in county court, and had responded to the Complaint to Show Cause adequately when it referenced that action within a Motion to Dismiss.

In this Brief the Petitioner, ALEXDEX CORPORATION, a Florida Corporation, will be collectively referred to as "ALEXDEX." Respondent, NACHON ENTERPRISES, INC., a Florida Corporation, shall be referred to as "NACHON." References to the Appendix to this Brief shall be designated (App. ). References to the Record on Appeal are designated (R. ).

All emphasis in this brief is added.

TABLE OF CONTENTS

TABLE OF CITATIONS ..... iii

STATEMENT OF THE FACTS AND CASE ..... 1

SUMMARY OF THE ARGUMENT ..... 3

ARGUMENT

THE DISTRICT COURT INAPPROPRIATELY  
REVERSED THE DETERMINATION OF THE  
LOWER TRIBUNAL THAT THE MECHANICS  
LIEN MUST BE DISCHARGED WHERE THE  
LIENOR FAILED TO COMMENCE AN  
APPROPRIATE ACTION, OR TO FILE A  
COUNTERCLAIM, WITHIN THE TIME  
SET FORTH WITHIN THE MECHANICS  
LIEN STATUTE AFTER THE FILING OF  
A PETITION FOR ORDER TO SHOW CAUSE ..... 5

CONCLUSION ..... 11

CERTIFICATE OF SERVICE ..... 12

## TABLE OF CITATIONS

Authority	Page
<i>Alternative Development, Inc., etc., v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc.,</i> 608 So. 2d 822 (Fla. 4th DCA 1992) .....	8
<i>Corbin Well Pump and Supply, Inc. v. Koon,</i> 482 So.2d 525 (Fla. 5th DCA 1986) .....	8
<i>Greene v. A.G.B.B. Hotels, Inc.,</i> 505 So. 2d 666 (Fla. 5th DCA 1987) .....	
<i>In Re the Estate of Weiss,</i> 106 So. 2d 411 (Fla. 1958).....	7
<i>Lusker v. Guardianship of Lusker,</i> 434 So.2d 951 (Fla. 2nd DCA 1983).....	
<i>Matrix Construction Corp. v. Mecca Construction, Inc.,</i> 578 So.2d 388 (Fla. 3rd DCA 1991) .....	6
<i>Nachon Enterprises, Inc. v. Alexdex Corporation,</i> 615 So. 2d 245(Fla. 3rd DCA 1993) .....	2
<i>Payette v. Clark,</i> 559 So. 2d 630 (Fla. 2nd DCA 1990).....	6
<i>Publix Supermarkets, Inc. v. Cheesbro Roofing, Inc.,</i> 502 So. 2d 484 (Fla. 5th DCA 1987) .....	7
F.S. §713.22(4) .....	10
Section 34.01, Florida Statutes (1990).....	6

## STATEMENT OF THE FACTS AND CASE

The facts and procedural history directly related to this appeal are simple. Indeed, the Original Record on Appeal consists of a mere eighteen (18) pages. No hearing transcripts were included.

In February of 1992, ALEXDEX, the Appellee below, filed a Complaint to Show Cause, pursuant to F.S. Chapter 713, to discharge a mechanics lien. (R. 2) NACHON filed a Motion to Dismiss and to Quash the Process (R. 4). NACHON's Motion to Dismiss contained two separate and distinct grounds for dismissal. The first was that in September of 1991, NACHON had filed an action to foreclose a mechanics lien on property owned by ALEXDEX, claiming a debt of approximately \$4,100, in the County Court in and for Dade County, Florida. A Notice of Lis Pendens had also been filed at that time. Nachon neither attached a copy of the complaint filed in the County Court to its pleadings, nor did it include any of the documents from that action within the Record on Appeal. Its second ground dealt with a purported irregularity in service, as a result of a defective summons. The Summons was also not included in the Record on Appeal.

A hearing was held on April 15, 1992 at which time the Motion to Dismiss was denied, by Order officially entered on April 23, 1992. (R. 10) NACHON filed no other response to the Complaint to Show Cause either prior to or subsequent to that time. (*See*, Index to Record on Appeal) In between the hearing and the actual date of the entry of the Order, ALEXDEX filed a Motion to Discharge Lien Pursuant to Rule to Show Cause which averred that service on NACHON had been accomplished on February 21, 1992, and that NACHON had failed to foreclose upon the then pending lien - which should thus be discharged as a matter of law. (R. 8) On May 27, 1992 the Honorable S. Peter Capua of the Eleventh Judicial Circuit in and for Dade

County entered his Order on Plaintiff's Motion to Discharge Lien Pursuant to Rule to Show Cause which granted the Motion and discharged the lien. (R. 18) By separate Order, the Lis Pendens related to the lien was discharged. (R. 14)

NACHON appealed the Order discharging its lien.

NACHON raised two issues in its brief to the Third District. The first was that the commencement of the COUNTY COURT action within the time permitted by Chapter 713 was a proper means of avoiding the discharge of the lien; and the second was that a special summons was required to be served.

On March 9, 1993 the District Court of Appeal of Florida, Third District, reversed. *Nachon Enterprises, Inc. v. Alexdex Corporation*, 615 So.2d 245 (Fla. 3rd DCA 1993) Therein, the Third District held that it was error to discharge the lien where the contractor had properly and timely instituted a foreclosure action in the County Court. In so finding, the District Court held that since Judges of the county courts may now hear all matters in equity within their jurisdictional parameters, "construction lien foreclosure actions are to be filed in the County Court if the amount involved does not exceed the jurisdictional limit of that court." The Third District expressly held that these types of foreclosure actions are not actions "involving the title and boundaries of real property" so as to require them to be filed in circuit court. Petitioner's Motions for Rehearing and Rehearing en banc were denied. Petitioner's Notice to Invoke Discretionary Jurisdiction was timely filed on May 10, 1993, and this Court graciously accepted jurisdiction to consider this matter.

## SUMMARY OF THE ARGUMENT

**THE DISTRICT COURT INAPPROPRIATELY  
REVERSED THE DETERMINATION OF THE  
LOWER TRIBUNAL THAT THE MECHANICS LIEN  
MUST BE DISCHARGED WHERE THE LIENOR  
FAILED TO COMMENCE AN APPROPRIATE  
ACTION, OR TO FILE A FORECLOSURE  
COUNTERCLAIM, WITHIN THE TIME SET FORTH  
WITHIN THE MECHANICS LIEN STATUTE AFTER THE  
FILING OF A COMPLAINT FOR ORDER TO SHOW CAUSE**

The decision below expressly states that jurisdiction to hear mechanics lien foreclosure actions is in the County Court where the amount of the lien is less than the jurisdictional amount of the county court. In so holding, the Court stated that mechanics lien foreclosure actions are not like 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.” This is error.

Since a foreclosure action by its terms requests the sale of the underlying parcel to satisfy a debt, it certainly effects title. Since it does so, the filing of a complaint in county court was a nullity, properly ignored by the circuit court Judge. The Respondent failed to file any pleading which would appropriately show cause why the lien should not be discharged, and failed to file a foreclosure action in a court of competent jurisdiction. As such, the lower tribunal was mandated to discharge the lien.

Unless a lien is transferred to bond, notwithstanding the amount of the lien, the foreclosure action must be filed in circuit court. This ensures uniformity, guarantees that there are no competing sales, and is consistent with the statutes relating to the subject matter jurisdiction of the various courts. Liens transferred to bond should be dealt with in accordance with their value, as they do not effect the title to realty. Nothing in this record indicates that prior to its discharge the lien was transferred to bond.

Since the Respondent wholly failed to protect his lien by filing an appropriate foreclosure action in a court of competent jurisdiction, the lien was correctly discharged.



## ARGUMENT

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The determination of the Third District, in reversing the lower tribunal's discharge of the Respondent's lien, was predicated upon a determination that the filing of a mechanic's lien foreclosure action in the county court was a proper mechanism for the enforcement and foreclosure of the challenged lien. In fact, the Third District went even further by holding that in cases where the amount of the lien itself was less than \$15,000, the county court had the **exclusive** jurisdiction to entertain these lien foreclosure actions since a mechanics lien foreclosure action, according to the panel hearing this matter in the Third District, was not a matter which affected title to real property. Petitioner will demonstrate to this Court that this predicate reasoning is flawed, and that the determination made by the lower tribunal should be reinstated.

The issue here is truly one of pure subject matter jurisdiction. If the county courts have subject matter jurisdiction to hear mechanics lien foreclosure actions where the amount of the lien is less than \$15,000, then the Third District was correct and based upon the previous filing of the county court action, the Motion to Dismiss (which should have included a copy of the complaint, but was probably sufficient to "show cause" why a lien should not be discharged) should have been granted. If there was, as ALEXDEX avers, no subject matter jurisdiction in the county court, then the county court action was leading to a void Order, was a nullity, and was properly

ignored when the Order discharging lien was entered, thus requiring a reversal of the Third District's Opinion.

What then, is the state of the law as would relate to subject matter jurisdiction over mechanic's lien foreclosure actions?

It is uncontroverted that a foreclosure action, although based on statute, is equitable in nature. Until recently, that would have vested exclusive jurisdiction in the Circuit Courts - but as was correctly noted by the Third District, the county courts now have equitable jurisdiction as well. Section 34.01, Florida Statutes (1990) We must look further.

Jurisdiction of the subject matter is not jurisdiction of the particular case, but rather is jurisdiction of the class of cases to which the particular controversy belongs. *Payette v. Clark*, 559 So. 2d 630 (Fla. 2nd DCA 1990); *Lusker v. Guardianship of Lusker*, 434 So.2d 951 (Fla. 2nd DCA 1983). The Jurisdiction of the circuit courts is set out in 26.021, Florida Statutes (1991). Among those items exclusively reserved to the circuit courts are those actions "involving the title and boundaries of real property."

Does a mechanic's lien foreclosure action "involve the title and boundaries of real property?" The Third District, citing cases which actually dealt only with possessory questions, said no. That determination is the heart of their error.

A separate panel of the Third District, in *Matrix Construction Corp. v. Mecca Construction, Inc.*, 578 So.2d 388 (Fla. 3rd DCA 1991) noted that the legislature, in enacting chapter 713, had conferred upon materialmen, workmen, and others the special privilege of asserting a mechanic's lien **against the real property benefit**. They noted in that case that the assertion of a mechanic's lien could have a drastic effect upon the use **and alienation** of real property. Somehow, that case and its correct recitation of the law, was ignored by the panel hearing the within case, despite the overlap of one of the Judges.

In *Publix Supermarkets, Inc. v. Cheesbro Roofing, Inc.*, 502 So. 2d 484 (Fla. 5th DCA 1987) the Fifth District Court of Appeal held, in an en banc decision, that an action to foreclose a mechanic's lien is an action seeking to judicially convert a lien 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.

In 1958 this Court decided *In Re the Estate of Weiss*, 106 So. 2d 411 (Fla. 1958) which correctly noted that the "line of demarcation between those actions of the county judge, with reference to determining interests which do and those which do not impinge on the jurisdiction vested in the circuit courts by organic law, is difficult to discern." In that decision, this Court held that

An action involves title to real estate "only where the necessary result of the decree or judgment is that one party gains or the other party loses an interest in the real estate, or where the title is so put in issue by the pleadings that the decision of the case necessarily involves the judicial determination of such rights."

In the typical lien foreclosure complaint, where the lien has not been transferred to bond<sup>1</sup>, the complaint, as is true herein, seeks a judicial sale of the underlying realty. Thus, lien foreclosure actions are one class of actions which directly involve title to property since one party stands to lose an interest in real estate by virtue of the judicial act taken - a forced sale. Absent payment or redemption, a certificate of title is issued from the clerk of the court to a successful buyer. Common sense tells us that nothing could effect title more than a direct judicial sale of the underlying parcel.

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<sup>1</sup> Once a lien has been transferred to bond, the action ceases to be one which involves title to real property, but rather is one where the action has been converted from one "in rem" to one "in personam." *Greene v. A.G.B.B. Hotels, Inc.*, 505 So. 2d 666 (Fla. 5th DCA 1987).

The Fourth District has also held that the title to real property in a foreclosure action is directly effected in *Alternative Development, Inc., etc., v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc.*, 608 So. 2d 822 (Fla. 4th DCA 1992), absent a transfer to bond.

Since the pleading filed, and relief sought, in a lien foreclosure action which has not been transferred to bond seeks to sell the property, it cannot be said that it does not effect the title to that property. If this Court accepts the exclusive jurisdiction of those proceedings to be within the purview of the circuit court, the next question to be resolved is what effect, if any, did the filing in the county court have upon the within action. Petitioner submits that it had no effect, and the lower tribunal was correct in ignoring it under the procedural history of this case.

Herein, the lower tribunal denied a Motion to Dismiss predicated upon the county court action. The Respondents DID NOTHING. They could have filed a counterclaim within this action. They could have properly transferred the cause to the circuit court, if it was within the time frame allowable to do so.<sup>2</sup> Absent one of those two choices, the county court case's existence was a nullity because it was winding its way toward a void judgment.

Only one Florida case is really close to the situation at hand. In *Corbin Well Pump and Supply, Inc. v. Koon*, 482 So.2d 525 (Fla. 5th DCA 1986) the District Court required the dissolution of a lien foreclosure judgment where, as

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<sup>2</sup> Respondents may argue that they tried to transfer the action to circuit court without success. This argument fails at this level for two reasons - one, the documents reflecting an attempt to transfer and the Order denying same are not contained within the Record on Appeal. Even were they to be so, however, one possible reason for the denial is the possibility that the Motion was improperly filed and/or improperly set. Without the Motion, transcript of hearing, notice of hearing and Order, it would be impossible to determine the true reason why the Motion was denied. In the absence of a complete record on this point, we must presume that there was no error.

here, the foreclosure action itself was initially filed in county court. In *Corbin*, the case was actually transferred to circuit court prior to the final judgment being entered - but the District Court held that since the transfer between courts took place after the statutory time for initially filing the lien foreclosure action, there was no way to correctly transfer the cause of action. They further held that the filing of the suit in the county court rather than the circuit court was a nullity because it lacked subject matter jurisdiction. Finally, they held that pursuant to section 713.22 a lien foreclosure action, to maintain the lien, must be filed in a court of "competent jurisdiction", which the county court "clearly" was not. Since the statute must be strictly construed, there was no choice but to void the sale and discharge the lien. The reason why that case is not "on all fours" is that the rationale used by that court was the fact that foreclosure actions were equitable - a factor which no longer exists. Because of that factor, however, the Fifth District did not have to reach the within issue, whether title is effected so as to additionally require that all filings be in circuit court.

Even assuming that the title to real property was not effected, there is still a concern as to whether the jurisdictional amount should be determined by the value of the individual lien or the value of the total value of the property to be effected. The lien itself may be a small lien on a tremendously valuable property. To ensure consistency, all liens filed against an individual parcel should be, at the very least, heard within the same court. Using the "lien value" analysis, there exists a strong possibility that there may be competing lien foreclosure sales in both the county and circuit courts where multiple liens of varying sizes are being transferred. Further, it does not seem likely that the intent of permitting equitable jurisdiction was to place into the hands of the county courts the ability to sell unlimited values of property all because of small liens. Until our two tier system of trial courts is totally abrogated, demarcation must be based upon the

total value of the issues being handled, not just the individual components of the lawsuits in question.

Section 713.22(4) mandates that an order canceling the lien be entered upon failure of a lienor to show cause why his lien should be enforced or the lienor's failure to commence an action before the return date of a summons emanating from a complaint to show cause. This is not a discretionary act. In this case, NACHON raised only a void proceeding as a defense. After being told, through the denial of the Motion to Dismiss, that the lower tribunal did not accept that defense, NACHON could have conceivably been found to have had ten days to file some type of further Answer and perhaps a counterclaim.<sup>3</sup> They chose not do to so, and allowed an Order to be entered which discharged the lien without ever having filed any type of document seeking foreclosure in Circuit Court. Absent something in the circuit court file which showed an appropriate defense to the Complaint for Order to Show Cause, the lower tribunal had no choice but to discharge the lien. The Third District should have had no choice but to affirm that decision.

## CONCLUSION

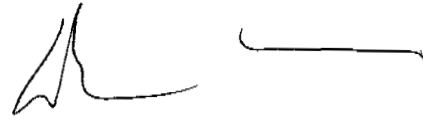
Putting aside the merits of this individual case, it is important that jurisdiction throughout this State be uniform as would relate to lien foreclosure actions. As demonstrated by the Notices of Supplemental Authority filed as a supplement to the Amended Jurisdictional Brief, the questionable nature of

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<sup>3</sup> The issue of whether there would be appropriate further pleading time, or whether the 20 days is absolute so that a Motion to Dismiss did not toll, extend or permit amendment after its denial, is not being briefed here - the strictest construction of the statute might not permit an extension after the denial of a Motion to Dismiss. But, to demonstrate that there clearly was no error in this case, ALEXDEX is giving NACHON the benefit of all questionable legal issues related to time.

where cases are to be filed and which court now has jurisdiction has created havoc. The failure to be able to obtain title insurance is an extreme detriment to the citizens of our State. The only way to cure this uncertainty is with a clear, concise and direct statement from this Court holding that the exclusive jurisdiction for all foreclosure proceedings is within the circuit court, unless there has been a transfer to bond. If a bond is posted, then the action does not effect title to real property and depending upon the amount of the lien the action could appropriately be filed in either the circuit our county courts. In so doing, it should reverse the determination of the District Court in this case and require the reinstatement of the lower tribunal's Orders.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Deborah Marks', written over a horizontal line.


DEBORAH MARKS

## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing Main Brief was served by mail upon Pedro F. Martel, Esq., Counsel for Appellant, 717 Ponce de Leon Blvd., Suite 319, Coral Gables, Florida 33134; to Larry R. Leiby, Esq., Counsel for the Real Property, Probate and Trust Law Section of the Florida Bar, 290 N.W. 165th Street, Penthouse 2, Miami, Florida 33169 this 7th day of October, 1993; to Charles R. Gardner, Esq., Counsel for the Real Property, Probate and Trust Law Section of the Florida Bar, 1300 Thomaswood Drive, Tallahassee, Florida 32312; to Jerry R. Linscott, Esq., Attorneys for American Resort Development Association, 2300 Sun Bank Center, 200 South Orange Avenue, Post Office Box 112, Orlando, Florida 32802; to William D. Palmer, Esq., Attorney for the Family Law Section of the Florida Bar, P.O. Box 1171, Orlando, Florida 32802; to Barry Kalmanson, Esq., 135 N. Magnolia Avenue, Orlando, Florida 32801; and to Gerald Fincke, Esq., 2401 East Graves Avenue, Orange City, Florida 32763.

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