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In the Supreme Court of Florida

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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.

PETITIONER'S AMENDED BRIEF ON JURISDICTION

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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 based upon the finding that it was proper for the contractor to have filed and pursued a mechanics lien foreclosure action in County Court when the amount claimed under the lien is within the jurisdictional limits of the County Court. A copy of the opinion of the Third District can be found at Appendix A.

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.).

All emphasis in this brief is added.

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STATEMENT OF THE FACTS AND CASE

The facts and procedural history relevant to the jurisdictional question are simple.

In September of 1991, NACHON filed an action to foreclose a mechanics lien on property owned by ALEXDEX, claiming a debt of approximately \$4,000, in the County Court in and for Dade County, Florida. (App. B) A Notice of Lis Pendens was also filed at that time. (App. C) The complaint sought, as its primary relief, that the interests of ALEXDEX be sold and that the proceeds be used to fund the lien and other ancillary expenses, including attorneys fees and costs. It also sought to have all persons claiming an interest in the property subsequent to the Lis Pendens filed to be foreclosed of any right in and to the property.

In February of 1992, ALEXDEX filed a Complaint to Show Cause, pursuant to F.S. Chapter 713, to discharge the lien. (App. D) NACHON filed a Motion to Dismiss and to Quash the Process, which was denied on April 23, 1992. (App. E) NACHON filed no other response to the Complaint to Show Cause subsequent to that time. (*See*, Index to Record on Appeal, App. F) 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. (App. G)

NACHON appealed that Order.

On March 9, 1993 the District Court of Appeal of Florida, Third District, reversed. 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 this type of foreclosure action is not an action “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.

SUMMARY OF THE ARGUMENT

JURISDICTION EXISTS IN THIS COURT UNDER ARTICLE V, §3(b)(3), FLORIDA CONSTITUTION

In accordance with Article V, §3(b)(3), Florida Constitution, this Court has jurisdiction to entertain proceedings where there is express and direct conflict between the circuits on the same question of law, or where the decision directly affects a class of constitutional officers.

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 decision conflicts, directly and expressly, with *Publix Supermarkets, Inc. v. Cheesbro Roofing, Inc.*, 502 So. 2d 484 (Fla. 5th DCA 1987) which held that a mechanics lien foreclosure action does act upon the title to real property. It also directly and expressly conflicts with *Alternative Development, Inc., etc., v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc.*, 608 So. 2d 822 (Fla. 4th DCA 1992) which held that, absent a transfer to bond, a lien foreclosure action acts directly upon the title to real property. Numerous other cases conflict as well, although not quite as directly.

Because the decision determines the jurisdiction of the county and circuit courts to hear mechanics lien foreclosure actions, the decision also expressly affects constitutional officers, to wit: Circuit Judges, County Judges, and Court Clerks who will be required to accept different classes of mechanics lien foreclosure actions in the various circuit and county courts based upon the amount of the lien in controversy, and to issue certificates of title from the clerk of the county court where required by a foreclosure judgment entered in the county court.

ARGUMENT

JURISDICTION EXISTS IN THIS COURT UNDER ARTICLE V, §3(b)(3), FLORIDA CONSTITUTION

A. Direct and Express Conflict

The instant opinion holds that a mechanic's lien foreclosure action is not an action "involving the title and boundaries of real property" and that construction lien foreclosure actions are to be filed in the County Court if the amount of the lien involved which does not exceed the jurisdictional limits of the Court.

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."

The typical lien foreclosure complaint, where the lien has not been transferred to bond¹, the complaint, as is true herein, seeks a judicial sale of the underlying realty.

¹ 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).

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 with a certificate of title issued. **Title is directly effected.**

The instant decision also conflicts with *Alternative Development, Inc., etc., v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc.*, 608 So. 2d 822 (Fla. 4th DCA 1992) which held that, absent a transfer to bond, a lien foreclosure action acts directly upon the title to real property.

B. Class of Constitutional Officers

F.S. §34.01(4) now reads that 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. Circuit Courts still retain, pursuant to F.S. §26.012(2)(g), exclusive jurisdiction to hear all actions involving the title and boundaries of real property.

The within decision has determined jurisdiction for county and circuit court judges to hear mechanic's lien foreclosure actions. As a class, therefore, it directly affects county judges (who are now directed to hear these actions), circuit judges (who are now divested of the authority to hear these actions), and clerks (who must now determine whether to accept the cases in the county or circuit court and must thereafter schedule sales and issue certificates of title based upon county court judgments.)

This Court has previously determined that clerks of court are constitutional officers, and that directions to them directly affects their class. *Ludlow v. Brinker*, 403 So. 2d 969 (Fla. 1981) (determination that an indigent may not utilize in forma pauperis statute to record a certified copy of a judgment without charge affects clerks). Since this decision would require clerks of the county court to accept mechanics lien foreclosure cases, and thereafter in furtherance of the ultimate judgments, to issue certificates of title, this case clearly affects their job as a class.

The Third District expressly construed F.S. §34.01 (4) and in so doing expressly affected the judges of that court as a class by conferring jurisdiction upon them to hear mechanics lien foreclosure cases.

C. Necessity for Adjudication

In his concurring opinion in *Charles Redi-Mix, Inc. v. Phillips*, 580 So. 2d 166 (Fla. 4th DCA 1991), Judge Glickstein wisely noted that “The mechanic’s lien law needs simplicity in its application.” To permit conflicting opinions as to the jurisdiction to entertain mechanic’s lien actions in the various courts certainly does not promote that goal.

Although to some degree the lines between county and circuit court are blurring, they still remain distinct in that the circuit court is still the only court with constitutional and statutory jurisdiction to transfer title to real property from one party to another. The ultimate relief sought in a lien foreclosure action is the judicial sale of a parcel of property and the distribution of the funds derived therefrom. Absent payment or redemption, a certificate of title is issued from the clerk of the court to a successful buyer.

If lien foreclosure actions are permitted to be filed in county courts in some districts and not in others, then there is a distinct possibility that title insurance companies will not accept the certificate of title issued by those districts if their primary location is in another district. In accordance with the information provided to this Court by the Real Property, Probate and Trust Section of the Florida Bar, in their Petition to Appear as Amicus Curiae, this is already the case.

Further, there is a valid question as to whether the amount in controversy is just the amount of the lien, or the value of the property being foreclosed since that is where the real power of the court is being directed. A \$500 lien on a 2 million dollar property would permit the county court to sell that 2 million dollar property under the analysis used by the Third District. It is possible that that same property could be

the subject matter of two competing foreclosure actions in two separate courts if a separate lien of, for example \$20,000, is also being foreclosed. It is therefore possible that two separate foreclosure sales could be set at the same courthouse on different days. This potential result simply should not be allowed to remain.

Finally, Article V, Section 5, Florida Constitution, expressly states that Jurisdiction of the circuit court shall be uniform throughout the state. Permitting the within opinion to stand will not accomplish that goal.

CONCLUSION

For the above stated reasons, it is respectfully requested that this Court accept jurisdiction over this cause and permit the filing of briefs on the merits. Even if this Court should ultimately hold that under the facts of the case at bar it was error to discharge the lien (for whatever reason) this Court must still take this case to in order to correct and prevent the serious complications which have and will result from the opinion of the Third District Court of Appeal in this case.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing Amended Brief was served by mail upon Pedro F. Martel, Esq., Counsel for Appellant, 717 Ponce de Leon Blvd., Suite 319, Coral Gables, Florida 33134, and 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 ^{8th} ~~2nd~~ day of June, 1993.

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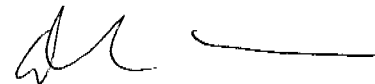
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