

095

FILED

SID J. WHITE

JUL 27 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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.

_____ \

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

PEDRO F. MARTELL, ESQUIRE
PEDRO F. MARTELL, P.A
717 Ponce de Leon Boulevard
Suite 319
Coral Gables, Florida 33134
(305) 446-3400
FL. Bar No. 157014

TABLE OF CONTENTS

TABLE OF CITATIONS..... ii

SUMMARY OF ARGUMENT..... 1

ARGUMENT

DISCRETIONARY JURISDICTION OF THIS COURT
UNDER ARTICLE V. §3(b)(3) FLORIDA CONSTI-
TUTION MAY NOT BE SOUGHT BY PETITIONER
TO REVIEW THE INSTANT DECISION OF THE
THIRD DISTRICT COURT OF APPEAL

A. The instant decision sought to be re-
viewed by this court does not expressly
and directly conflict with the decision
of another district court of appeal..... 3

B. The instant decision sought to be re-
viewed by this court does not affect
a class of constitutional or state of-
ficers..... 6

CONCLUSION..... 7

CERTIFICATE OF SERVICE..... 7

SERVICE LIST..... 8

TABLE OF CITATIONS

Authority	Page
Alternative Development, Inc., etc. v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc., 608 So. 2d 822 (Fla. 4th DCA 1992)	1,3
Publix Supermarkets, Inc. v. Cheesbro Roofing, Inc., 502 So. 2d 484 (Fla. 5th DCA 1987)	1,3
§26.012(2)(6) Fla. Stat. (1991).....	3
§34.01(4) Fla. Stat. (1990).....	1,3,4,6
Article V, §3(b)(3), Florida Constitution.....	1,3

SUMMARY OF AGRUMENT

DISCRETIONARY JURISDICTION OF THIS COURT UNDER ARTICLE V, §3(b)(3) FLORIDA CONSTITUTION MAY NOT BE SOUGHT BY PETITIONER TO REVIEW THE INSTANT DECISION OF THE THIRD DISTRICT COURT OF APPEAL.

The decisions of **Publix Supermarkets, Inc. v. Cheesbro Roofing, Inc.**, 502 So. 2d 484 (Fla. 5th DCA 1987) and **Alternative Development, Inc., etc. v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc.**, 608 So. 2d 822 (Fla. 4th DCA 1992) relied upon by Petitioner in its brief do not expressly and directly conflict with the instant decision sought to be reviewed by this Court. The foregoing decisions held that a mechanic's lien foreclosure action acts directly upon the title to real property.

Petitioner's argument fails to demonstrate that title to real property is so put at issue by the pleadings in a construction lien foreclosure action that the decision of the case necessarily involves the judicial determination of rights to the title of property.

Contrary to Petitioner's argument, the instant decision has not determined the jurisdiction of circuit and county court judges to hear mechanic's lien foreclosure actions. The decision has merely construed §34.01(4) Fla. Stat. (1990) as to include the county court as a court of competent jurisdiction to hear construction lien foreclosure actions because they are equitable actions not involving the title and boundaries of real property.

This judicial interpretation of the statute does not affect judges and clerks as to constitute valid grounds for this Court to accept discretionary jurisdiction to review the instant decision.

ARGUMENT

DISCRETIONARY JURISDICTION OF THIS COURT UNDER ARTICLE V, §. 3 (b)
(3) FLORIDA CONSTITUTION MAY NOT BE SOUGHT BY PETITIONER TO
REVIEW THE INSTANT DECISION OF THE THIRD DISTRICT COURT OF APPEAL

A. The instant decision sought to be reviewed by this Court does not expressly and directly conflict with the decision of another district court of appeal.

Petitioner's Argument is solely based on the grounds that the instant decision conflicts with the decision of **Publix Supermarkets, Inc. v. Cheesbro Roofing, Inc.**, 502 So. 2d 484 (Fla. 5th DCA 1987), and **Alternative Development, Inc., etc., v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc.**, 608 So. 2d 822 (Fla. 4th DCA 1992), because both decisions held that a lien foreclosure action acts directly on the title to real property and consequently it is an action involving the title of real property which falls within the exclusive jurisdiction of the circuit court.

§26.012(2)(6), Fla. Stat. (1991) vests original exclusive jurisdiction in the circuit court "In all actions involving the title and boundaries of real property".

§34.01(4), Fla. Stat. (1990) gives the county court a concurrent jurisdiction in 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(4) provides that "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) The wording of this provision does not give the county court exclusive jurisdiction in all matters in equity within its jurisdictional amount.

Petitioner misinterprets §34.01(4) Fla. Stat. (1990) by stating in paragraph 4 of page 5 of its brief that "circuit judges (sic) are now divested of the authority to hear these actions" - (construction lien foreclosure actions). Circuit court judges have not been divested of said authority because there is no doubt that an action to foreclose a construction lien in a sum exceeding \$15,000.00 is to be filed in the circuit court.

The question is then, WHETHER AN ACTION TO FORECLOSE A CONSTRUCTION LIEN INVOLVES THE TITLE OF REAL PROPERTY.

The instant decision sought to be reviewed by this court held that it does not involve the title to real property.

In a construction lien foreclosure action title to real property is not put at issue. This action does not determine any question of title to the land. We must then differentiate when an action AFFECTS the title and when it INVOLVES the title. A typical action involving the title to the land is a quiet title action.

A construction lien foreclosure action is a statutory ac-

tion 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.

Petitioner argues that because the complaint to foreclose a construction lien seeks a judicial sale of the underlying realty it is a class of action which directly involves 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.

Assuming arguendo that Petitioner is correct it can be argued that an action in county court for money damages in the sum of \$4,000.00 for goods sold and delivered involves title to the land because the \$4,000.00 judgment obtained becomes a lien against the real property of the judgment-debtor which execution seeks a judicial sale of said real property and therefore directly affects the title to said property.

The decisions of the district courts of appeal relied upon by Petitioner in its initial brief on discretionary jurisdiction of this court do not expressly and directly conflict with the instant decision of the Third District Court of Appeal.

B. The instant decision sought to be reviewed by this court does not affect a class of constitutional or state officers.

The 1990 amendment to §34.01(4) Fla. Stat. expanded the jurisdiction of the county court not only by increasing its jurisdictional amount, but also by allowing judges of the county court to hear certain equity matters.

Contrary to Petitioner's argument, the instant decision has not determined the jurisdiction of county and circuit courts judges to hear mechanic's lien foreclosure actions. The decision has merely construed §34.01(4) Fla. Stat. (1990) as to include the county court as a court of competent jurisdiction to hear a construction lien foreclosure action, because it is an equitable action not involving the title and boundaries of real property.

There is no difference for county court judges and clerks in accepting now cases as it is the case, not previously cognizable by the court court because of the jurisdictional amount involved, than in accepting construction lien foreclosure cases within the jurisdictional amount of the county court.

The clerk of the court is the "Clerk of Circuit & County Courts". The clerk will continue to issue certificates of title in construction lien foreclosure actions in the same manner as before, and under the exact same procedure. The only difference is that according to the amount of the judgment it will be entered by a circuit court judge or by a county court judge.

CONCLUSION

For the reasons noted herein, Respondent, **NACHON ENTERPRISES, INC.**, a Florida corporation, respectfully requests that this court do not accept jurisdiction in this cause.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Answer Brief on Jurisdiction has been furnished by United States mail this 26th day of July, 1993 to counsels of record as listed on the attached service list.

PEDRO F. MARTELL, P.A.
Attorney for Respondent
717 Ponce de Leon Boulevard
Suite 319
Coral Gables, FL 33134
(305) 446-3400



PEDRO F. MARTELL, ESQUIRE

SERVICE LIST

DEBORAH MARKS, ESQUIRE

12555 Biscayne Boulevard
Suite 993
North Miami, Florida 33181
Counsel for Petitioner

RICHARD J. BURTON, ESQUIRE

1815 Griffin Road
Suite 403
Dania, Florida 33004
Counsel for Petitioner

CHARLES R. GARDNER, ESQUIRE

1300 Thomaswood Drive
Tallahassee, Florida 32312
Counsel for The Real Property,
Probate & Trust Law Section of
the Florida Bar

LARRY R. LEIBY, ESQUIRE

Penthouse 2
290 N.W. 165th Street
Miami, Florida 33169
Counsel for The Real Property,
Probate & Trust Law Section of
the Florida Bar

WILLIAM D. PALMER, ESQUIRE

P.O. Box 1171
Orlando, Florida 32802
Counsel for The Family Law
Section of the Florida Bar

GERALD B. FINCKE, ESQUIRE

2401 E. Graves Avenue
Suite 24
Orange City, Florida 32763
Counsel for Ocean East Resort
Club Association, Inc.

BARRY KALMANSON, ESQUIRE

135 North Magnolia Avenue
Orlando, Florida 32801
Counsel for The Aluminum
Association of Florida, Inc.
and The National Association
of Credit Management of Florida,
Inc.