

097 D.A. 1-4-94

11/28

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  
NOV 1 1993  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

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**RESPONDENT'S BRIEF ON THE MERITS**

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## STATEMENT OF THE CASE AND FACTS

This is a reply to an appeal from a decision of the District Court of Appeal, Third District of Florida, reversing the discharge of a construction lien filed by Respondent, **NACHON ENTERPRISES, INC.**, a Florida corporation.

In this brief Respondent, **NACHON ENTERPRISES, INC.**, a Florida corporation will be referred to as "**NACHON**", and Petitioner, **ALEXDEX CORPORATION**, a Florida corporation will be referred to as "**ALEXDEX**". References to the record on appeal are designated (R.). All emphasis in this brief is added.

### The Claim of Lien

On June 11th, 1991 **NACHON** (Appellant below) properly recorded its claim of a construction lien against **ALEXDEX'S** (Appellee below) property, a copy of which is attached to **ALEXDEX'S** complaint to show cause (R. 2-3).

### The Complaint to Foreclose the Construction Lien

On September 18th, 1991 **NACHON** filed its complaint against **ALEXDEX** in the civil division of the County Court, in and for Dade County, Florida, under Case No. 91-17172 CC 05, to foreclose the construction lien subject matter of this appeal, in the sum of \$4,140.44 pursuant to §34.01 Fla. Stat.

On May 29th, 1992 after extensive litigation between **NACHON** and **ALEXDEX** in the aforesaid action the County Court entered its Order abating said action pending resolution of the Circuit Court case subject matter of this appeal.

### The Lawsuit

On February 19th, 1992 **ALEXDEX** represented by another counsel filed a complaint against **NACHON** to show cause why the aforesaid construction lien should not be discharged (R. 2-3).

**NACHON** filed its motion to dismiss the complaint and to quash the process (R. 4-6) based upon the ground that **NACHON** had already instituted a foreclosure action as required by the statute, and also that the process violated the statute upon which the complaint was based upon.

Seven (7) days after the hearing on **NACHON'S** motion to dismiss the complaint and to quash the process, the Honorable Judge S. Peter Capua entered his Order denying both motions (R. 10).

**ALEXDEX** then filed its motion to discharge lien pursuant to rule to show cause (R. 8-9) based upon the ground that no foreclosure action had been instituted by **NACHON**.

Six (6) days after the hearing on **ALEXDEX'S** motion to

discharge the lien the Honorable Judge S. Peter Capua entered his Order granting **ALEXDEX'S** motion to discharge lien (R. 18).

On June 19th, 1992 the Honorable Judge S. Peter Capua entered his Order discharging lis pendens (R. 14-17).

On July 30th, 1992 the Clerk of the Circuit and County Courts in and for Dade County, Florida filed its Certificate of a cash bond filed by **ALEXDEX** transferring **NACHON'S** lien to security.

#### The Appeal

On June 24th, 1992 **NACHON** appealed to the District Court of Appeal, Third District of Florida, the Order of the Circuit Court entered on May 27th, 1992 granting **ALEXDEX'S** motion to discharge **NACHON'S** lien.

On March 9th, 1993 the District Court of Appeal, Third District of Florida, reversed the Order of the Circuit Court discharging the construction lien.

The District Court of Appeal found that **NACHON** (the Lienor) properly filed the foreclosure action in the County Court, and thus it was error for the Circuit Court to discharge the lien.

SUMMARY OF ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA, HOLDING THAT PURSUANT TO §34.01(4) FLA STAT. (1990) THE COUNTY COURT IS A COURT OF COMPETENT JURISDICTION TO HEAR CONSTRUCTION LIEN FORECLOSURE ACTIONS NOT EXCEEDING ITS JURISDICTIONAL LIMIT BECAUSE THEY ARE EQUITABLE ACTIONS NOT INVOLVING THE TITLE AND BOUNDARIES OF REAL PROPERTY IS CORRECT.

The instant decision sought to be reviewed by this Court held that an action to foreclose a construction lien pursuant to Chapter 713 Florida Statutes does not involve the title and boundaries of 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 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.

Respondent timely and properly filed the foreclosure action in

the County Court and therefore avoided the cancellation of its  
lien.



## ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA, HOLDING THAT PURSUANT TO §34.01(4) FLA STAT. (1990) THE COUNTY COURT IS A COURT OF COMPETENT JURISDICTION TO HEAR CONSTRUCTION LIEN FORECLOSURE ACTIONS NOT EXCEEDING ITS JURISDICTIONAL LIMIT BECAUSE THEY ARE EQUITABLE ACTIONS NOT INVOLVING THE TITLE AND BOUNDARIES OF REAL PROPERTY IS CORRECT.

The foreclosure action at issue here is not an action involving the title and boundaries of real property. In McMullen v. McMullen 122 So. 2d. 626 (Fla. 2d. DCA 1960) the court held that for property to be involved in litigation it must appear that title to the land will be directly affected by the judgment of the court, and title to the property is not directly affected if the judgment can be satisfied by the payment of money. The case at issue here is an action to collect monies for materials sold and delivered to the property owner which judgment can be satisfied by the payment of money.

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 action. 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.

§26.012(2)(6), Fla. Stat. 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.

In Re: The Estate of Weiss, 106 So. 2d. 411 (Fla 1958) 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 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 legislature in enacting §26.012(2)(6) did not intend to vest original exclusive jurisdiction in the circuit court in all actions affecting real property, but in all actions involving the title and boundaries of real property.

There is no doubt that a foreclosure sale affects the real property involved in the litigation, but the said foreclosure action, as is the instant case, does not involve the title and boundaries of said real property.

**CONCLUSION**

The decision of the District Court of Appeal, Third District of Florida holding that an action to foreclose a construction lien pursuant to Chapter 713 Florida Statutes is not an action involving the title and boundaries of real property and therefore is to be filed in the county court if the amount involved does not exceed the jurisdictional limit of that court is correct and should be affirmed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on the Merits has been furnished by U.S. Mail this 28th day of October, 1993 to counsels of record as listed on the attached Service List.

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