

JPS

12/13

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 82,708
DCA NO. 93-00204, THIRD DISTRICT
L.T. NO. 92-14357 CA 20 (DADE)
HONORABLE HAROLD SOLOMON

OCEAN VILLAGE CONDOMINIUM
ASSOCIATION, INC., a Florida
non-profit corporation,

Petitioner.

vs.

JON SCHUYLER BROOKS,

Respondent.

_____ /

FILED

SID J. WHITE

NOV 17 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

MARK E. FRIED, ESQ.
FLORIDA BAR NO. 283878
MARK E. FRIED, P.A.
25 SE Second Avenue
Suite 1135
Miami, FL 33131
Tel: (305) 371-7079
Fax: (305) 371-5727

INTRODUCTION

This is an appeal from a determination made by the Third District Court of Appeal which reversed an order denying Appellee's motion to set aside a default and default judgment for foreclosure of a condominium maintenance lien 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 Court of Appeal can be found at Appendix A.

In this Brief, Petitioner, OCEAN VILLAGE CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, shall be referred to as "OCEAN VILLAGE". The Respondent, JON SCHUYLER BROOKS, shall be referred to as "BROOKS".

References to the Appendix to this Brief shall be designated "(APP. ___) ". All emphasis in this Brief is added.

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	iii
STATEMENT OF THE FACTS AND CASE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
JURISDICTION EXISTS IN THIS COURT UNDER ARTICLE V, .§3(b)(3), FLORIDA CONSTITUTION	
A. Direct and Express Conflict	5
B. Class of Constitutional Officers	6
C. Necessity for Adjudication	8
CONCLUSION	10
CERTIFICATE OF SERVICE	10

TABLE OF CITATIONS

<u>AUTHORITY</u>	<u>PAGE</u>
<u>Alternative Development, Inc., etc. v. St. Lucie Club and Apartment Homes Condominium Association, Inc., etc.,</u> 608 So.2d 822 (Fla. 4th DCA 1992)	3,6
<u>Charles Redi-Mix, Inc. v. Phillips,</u> 580 So.2d 166 (Fla. 4th DCA 1991)	8
<u>Greene v. A.G.B.B. Hotels, Inc.,</u> 505 So.2d 666 (Fla. 5th DCA 1987)	6
<u>In Estate of Weiss,</u> 106 So.2d 411 (Fla. 1958)	5
<u>Ludlow v. Bricker,</u> 403 So.2d 969 (Fla. 1981)	7
<u>Nachon Enterprises, Inc. v. Alexdex Corp.,</u> 615 So.2d 245, 246 (Fla.3rd DCA), <u>review granted</u> , No. 81,765 (Fla. 1993)	2,5,8,10
<u>Publix Supermarkets, Inc. v. Cheesbro Roofing, Inc.,</u> 502 So.2d 484 (Fla. 5th DCA 1987)	3,5
F.S. §26.012(2)(g)	6
F.S. §34.01(4)	6,7
Article V, §3(b)(3), Florida Constitution	3,5,9

STATEMENT OF THE FACTS AND CASE

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

In June of 1992, OCEAN VILLAGE filed an action to foreclose a lien for condominium maintenance on property owned by BROOKS, claiming a debt of approximately \$5,120.00, in the Circuit Court of the 11th Judicial Circuit 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 interest of BROOKS be sold, and that the proceeds be used to fund the lien and other ancillary expenses, including attorney's 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.

On August 21, 1992, an Order for Entry of Default was entered by the trial court. On September 16, 1992, following a hearing on OCEAN VILLAGE's Motion for Default Final Judgment and Foreclosure of Lien, at which both OCEAN VILLAGE and BROOKS attended and argued, a Final Judgment for Foreclosure of Lien and Taxation of Costs and Attorney's Fees was entered by the Honorable Harold Solomon of the 11th Judicial Circuit Court in and for Dade County, Florida.

On October 16, 1992, an Agreed Order Postponing and Resetting the Sale Date was entered. On December 8, 1992, an Amended Final Judgment for Foreclosure of Lien and Taxation of Costs and

Attorney's Fees was entered.

BROOKS' filed an Emergency Motion to Set Aside Default, Default Judgment, and to Cancel Foreclosure Sale (APP. D) which was denied in part on December 29, 1992 (APP. E).

BROOKS' appealed that Order.

On October 12, 1993, the District Court of Appeal of Florida, Third District, reversed. The Third District held that the Circuit Court was without jurisdiction to enter the default and default judgment. In so finding, the District Court held that the County Court had jurisdiction 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. The Third District held that "a 'court of competent jurisdiction' to hear foreclosure actions, which are equitable in nature, now includes the County Court" citing Nachon Enterprises, Inc. v. Alexdex Corp., 615 So.2d 245, 246 (Fla.3rd DCA), review granted, No. 81,765 (Fla. 1993). The Third District further held that it could not distinguish the condominium lien foreclosure proceeding involved in the instant case from the construction lien involved in the Nachon. In Nachon, 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.

SUMMARY OF 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 the condominium lien foreclosure, undistinguishable from a mechanic's lien foreclosure action, is in the county court where the amount of the lien is within the jurisdictional amount of the county court.

In Nachon the Third District stated that mechanic's lien foreclosure actions are not like actions to quiet title, which are within the exclusive purview of circuit court, 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 mechanic's 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.

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 also be required to accept different classes of mechanics liens 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 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 condominium lien foreclosure action is undistinguishable from a mechanics lien foreclosure action, and is not within the jurisdiction of the circuit court. The Court equating the condominium lien foreclosure in this proceeding to the construction lien involved in Nachon implies that the foreclosure action is not an action "involving the title and boundaries of real property", and that lien foreclosure actions are to be filed in the county court, if the amount of the lien involved 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 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 bond ¹, 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 with a certificate of title issued. **Title is directly affected.**

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 title to real property.

B. CLASS OF CONSTITUTIONAL OFFICERS

F.S. §34.01(4) now reads that Judges of the county court 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 th laws of Florida. Circuit Courts still retain, pursuant to F.S. §26.021(2)(g),

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).

exclusive jurisdiction to hear all actions involving the title and boundaries of real property.

The within decision has determined jurisdiction for county and circuit judges to hear 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. Bricker, 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 maintenance 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 as well as maintenance 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 in the Nachon appeal, 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 \$500.00 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 same property could be the subject matter of two competing foreclosure actions in two separate courts if a separate lien of, for example \$20,000.00, 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

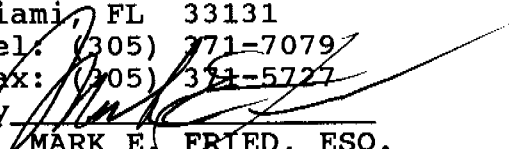
For the above-stated reasons, it is respectfully requested that this Court accept jurisdiction over this cause and permit the filing of briefs on the merits. The jurisdictional issues involved in this case are exactly the same as those involved in Nachon Enterprises, Inc. v. Alexdex Corp., 615 So.2d 245, Fla. 3rd DCA 1993, review granted No. 81, 765 (FLA. 1993). The Court's decision in Nachon by this Court should directly resolve the issue of this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction was furnished by U.S. Mail to:

BRUCE J. SMOLER, ESQ.
ATTORNEY FOR APPELLANT
WHITEBOOK & SMOLER, P.A.
100 SE SECOND ST SUITE 3940
MIAMI, FL 33131

this 16th day of November, 1993.

MARK E. FRIED, P.A.
25 SE Second Avenue #1135
Miami, FL 33131
Tel: (305) 371-7079
Fax: (305) 371-5727
By 
MARK E. FRIED, ESQ.
FLA BAR NO. 283878