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**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. 82,708**

OCEAN VILLAGE CONDOMINIUM  
ASSOCIATION, INC.,  
  
Petitioner,  
  
v.  
  
JON SCHUYLER BROOKS,  
  
Respondent.

ON PETITION FOR REVIEW FROM THE  
DISTRICT COURT OF APPEAL, THIRD DISTRICT

**BRIEF OF PETITIONER ON THE MERITS**  
(With Separate Appendix)

Mark Fried, Esq. of  
MARK FRIED, P.A.  
1001 S. Bayshore Drive  
Suite 2706  
Miami, Florida 33131  
(305)371-7079

Douglas H. Stein, Esq. of  
DOUGLAS H. STEIN, P.A.  
1001 So. Bayshore Drive  
Suite 2706  
Miami, Florida 33131  
(305)358-2233

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	4
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Alexdex Corp. v. Nachon Enterprises, Inc.,</u> 626 So.2d 203 (Fla. 1993).....	2
<u>Alexdex Corp. v. Nachon Enterprises, Inc.,</u> 19 Fla. L. Weekly 5417 (Fla. Sept. 1, 1994).....	3, 4, 5
<u>Brooks v. Ocean Village Condominium Association, Inc.,</u> 625 So.2d 111 (Fla. 3d DCA 1993).....	2
<u>Nachon Enterprises, Inc. v. Alexdex Corp.,</u> 615 So.2d 245 (Fla. 3d DCA 1993).....	2, 4

### INTRODUCTION

Petitioner OCEAN VILLAGE CONDOMINIUM ASSOCIATION, INC. ("OCEAN VILLAGE") has sought review of the decision of the District Court of Appeal of Florida, Third District which reversed the judgment of the Circuit Court entered against respondent JON SCHUYLER BROOKS ("BROOKS").

Throughout this Brief on the Merits the parties will be referred to by name. The symbol "A." refers to the Appendix filed simultaneously with this Brief. All emphasis is added unless otherwise noted.

### STATEMENT OF THE FACTS AND CASE

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 Eleventh Judicial Circuit in and for Dade County, Florida. (A.1-8) A Notice of Lis Pendens was also filed at that time. (A.9) In its Complaint OCEAN VILLAGE 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 Circuit Court. (A.10). 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, the Circuit Court entered a Final Judgment for Foreclosure of Lien and Taxation of Costs and Attorney's Fees. (A.11-14).

After agreed upon postponements of the foreclosure sale, and amendements to the Final Judgment on December 8, 1992, to reflect new sale dates, the foreclosure sale was set for December 17, 1992. On December 16, 1992, BROOKS' filed an Emergency Motion to Set Aside Default, Default Judgment, and to Cancel Foreclosure Sale (A.15-24). On December 17, 1992, the Circuit Court entered its interim order on that Emergency Motion, postponing the foreclosure sale for 60 days. (A.25). On December 29, 1992, however, the Circuit Court entered its ultimate order denying BROOK'S Motion to set aside the Default Judgment (A.26-28).

BROOKS appealed that non-final order to the District Court of Appeal of Florida, Third District. On October 12, 1993, the Third District reversed the Circuit Court and held that because the lien amount was less than \$15,000.00, the Circuit Court was without jurisdiction to enter the default judgment. Brooks v. Ocean Village Condominium Ass'n, Inc., 625 So.2d 111 (Fla. 3d DCA 1993). (A.29-31). Citing to its own decision in Nachon Enterprises, Inc. v. Alexdex Corp., 615 So.2d 245, 246 (Fla. 3d DCA 1993), the Third District held that the County Court had exclusive jurisdiction to hear all matters in equity involving any case within the jurisdictional amount of the County Court, except as otherwise restricted by the State Constitution or the laws of Florida. At that time this Court had granted review in Nachon, 626 So.2d 203

(Fla. 1993), but had not issued it's decision.

On November 8, 1993 OCEAN VILLAGE timely petitioned this Court for review of the Third District's decision. On September 1, 1994, this Court issued its decision in Alexdex Corp. v. Nachon Enterprises, Inc., 19 Fla. L. Weekly S417 (Fla. Sept. 1, 1994). The following day, on September 2, 1994, this Court accepted jurisdiction in the instant case, dispensing with oral argument.

#### **SUMMARY OF THE ARGUMENT**

In Alexdex Corp. v. Nachon Enterprises, Inc., 19 Fla. L. Weekly S417 (Fla. Sept. 1, 1994), this Court held that the Circuit Court has jurisdiction over all actions for the foreclosure of a lien on real property, notwithstanding the monetary amount of the lien. Thus, the Third District erred in holding that only the County Court, and not the Circuit Court, had jurisdiction to hear OCEAN VILLAGE'S action. The decision of the Third District should be quashed with instructions that the judgment entered by the Circuit Court be reinstated.

### ARGUMENT

THE THIRD DISTRICT ERRED IN  
REVERSING THE JUDGMENT OF THE  
CIRCUIT COURT ON THE BASIS THAT THE  
CIRCUIT COURT WAS WITHOUT  
JURISDICTION TO ENTER THE JUDGMENT

After this Court's decision in Alexdex Corp. v. Nachon Enterprises, Inc., 19 Fla. L. Weekly S417 (Fla. Sept. 1, 1994), there can be no question that the Third District's decision must be quashed. In reversing the judgment entered by the Circuit Court, the Third District relied exclusively on its own previous decision of Nachon Enterprises, Inc. v. Alexdex Corp., 615 So.2d 245 (Fla. 3d DCA 1993). Although this Court had granted review of Nachon at the time the Third District issued the instant decision, this Court had yet to issue its Nachon opinion. Thus The Third District did not have the benefit of this Court's Nachon decision at the time the Third District issued its instant decision on October 12, 1993.

This Court's Nachon decision easily disposes of this case. In Nachon this Court considered the issue of whether an action for the foreclosure of a lien on real property must be initiated in Circuit Court or County Court. Upon construing the legislative history of the relevant statutes, this Court concluded that the Circuit Court would always have jurisdiction of such an action notwithstanding the monetary amount of the lien at issue, and the County Court would have concurrent jurisdiction of those actions concerning lien amounts within the monetary jurisdictional limits of the County Court:

[W]e conclude that the legislature  
intended to provide concurrent

equity jurisdiction in circuit and county courts, except that equity cases filed in county courts must fall within the county court's monetary jurisdiction as set by statute.

. \* \* \*

[W]e hold that such foreclosures that fall within the county court's statutorily set limit may be filed in either county or circuit court.

Id. at 418 (footnote omitted). This Court disapproved that portion of the Third District's Nachon decision which held to the contrary.

In the instant case, the lien amount is below \$15,000.00, i.e. within the monetary jurisdictional limits of the County Court. Thus, the Third District reversed the judgment entered by the Circuit Court on the belief that only the County Court had jurisdiction. In light of this Court's Nachon decision, it is now indisputable that the Third District's belief was erroneous. The Circuit Court was clearly with jurisdiction over OCEAN VILLAGE'S foreclosure of the lien on real property notwithstanding the monetary amount of the lien at issue.



CONCLUSION

The Court should quash the decision of the Third District Court of Appeal, and remand the case with directions that the Default Judgment entered by the Circuit Court be reinstated.

Respectfully submitted,

Mark E. Fried, P.A.  
1001 So. Bayshore Drive  
Suite 2706  
Miami, Florida 33131  
(305) 371-7079

By: 

MARK E. FRIED, ESQ.  
Fla. Bar No. 283878

and

Douglas H. Stein, P.A.  
1001 So. Bayshore Drive  
Suite 2706  
Miami, Florida 33131  
(305) 358-2233

By: 

DOUGLAS H. STEIN, ESQ.  
Fla. Bar No. 355283

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on the Merits was furnished by U.S. Mail to: BRUCE J. SMOLER, ESQ., WHITEBOOK & SMOLER, P.A., 100 S.E. Second Street, Suite 3940, Miami, Florida 33131, this 26th day of September, 1994.

  
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OF COUNSEL