He Who Seeks Equity Must Find the Court
Which Does Equity - The Current
Jurisdictional Conflict

Manuel R. Valcarcel∗
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I. Introduction

The Florida Constitution, through article V, vests the circuit courts with exclusive original jurisdiction over proceedings in equity.1 This exclusive

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1. Article V is the judiciary article of the Constitution of the State of Florida, as revised in 1968; it replaced article V of the Constitution of 1885. Section 20(c)(3) provides: Circuit courts shall have jurisdiction of appeals from county courts and municipal courts, except those appeals which may be taken directly to the supreme court; and they shall have exclusive original jurisdiction in all actions at law not cognizable by the county courts; of proceedings relating to the settlement of the
grant of jurisdiction to the circuit courts is also codified in section 26.012 of the Florida Statutes, which states that the circuit courts have “exclusive original jurisdiction . . . in all cases in equity.” Section 26.012 also contains a provision granting the circuit courts exclusive original jurisdiction in all actions “involving the title and boundaries of real property.” Foreclosure actions have been considered to be within the exclusive jurisdiction of the circuit courts because they are in equity and involve title to real property.

3. Id. § 26.012(2)(g).
4. See FLA. STAT. § 702.01 (1993) (entitled, “Foreclosure of Mortgages, Agreements for Deeds, and Statutory Liens,” providing that all such actions shall be in equity); see also 22 FLA. JUR. 2D Equity § 9 (1992).

5. Foreclosure is an action in equity because it involves the title to property. See 22 FLA. JUR. 2D Equity § 31 (1992). Although a lien by itself is only a claim or charge on property, an action to foreclose a lien seeks to collect on that claim or charge by judicial sale of the subject property, which results in the debtor losing his title to the property. Black’s Law Dictionary defines foreclosure as follows:

The process by which a mortgagor of real or personal property, or other owner of property subject to a lien, is deprived of his interest therein. A proceeding in equity whereby a mortgagee either takes title to or forces the sale of the mortgagor’s property in satisfaction of a debt.


Foreclosure of liens derives from the historical evolution of title theory mortgages in which the lender took title to the borrower’s property, in fee simple subject to condition subsequent, as collateral for a loan. The borrower kept a right of re-entry. The condition subsequent was paying off the loan by a specified date, called “law day.” If the loan was not paid off by law day, then the condition subsequent would not be satisfied and the borrower would lose his right of re-entry. Because it was inequitable for a borrower to lose his rights
In 1990, however, the Florida Legislature amended section 34.01 of the Florida Statutes to vest the county courts with increased subject matter jurisdiction. The amendment provided for an increase in the monetary jurisdiction of the county courts to $15,000 after July 1, 1992. In addition, pursuant to the amended version of section 34.01, the county courts now "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." The legislature failed to simultaneously amend section 26.012, as well as several other statutory sections, to reflect the changes in section 34.01. As a result, section 34.01 is seemingly in conflict with the jurisdictional provisions in article V of the Florida Constitution, as well as with section 26.012.

The apparent conflict between circuit court and county court subject matter jurisdiction in equity created great uncertainty among Florida practitioners, particularly in the foreclosure area. Any judgment resulting from an action filed in a court lacking subject matter jurisdiction is void. Lack of subject matter jurisdiction is a defense which can be raised at any
to the land by failing to meet the law day deadline even when the borrower had a good excuse, the court of equity afforded borrowers the equity of redemption. Borrowers could attempt to redeem their property after law day by paying the entire amount of the loan. Because lenders needed to dispose of the collateral property in order to recuperate their loan, equity afforded lenders the right to foreclose the borrower's equity of redemption. Thus, foreclosure involves title to property, and the action has persisted, from its application in title theory mortgages to its adaptation in lien theory mortgages, and consequently to liens in general. See Jesse Dukeminier & James E. Krier, Property 669-72 (3d ed. 1993).

8. Id. § 34.01(4).
9. See, e.g., Fla. Stat. § 55.10(8) (1993) (providing that a party claiming an interest in property with a lien can seek equitable relief in the circuit court to protect his or her interest); id. § 702.07 (providing that circuit courts have jurisdiction to rescind, vacate, and set aside foreclosure decrees); id. § 713.31(1) (providing that circuit courts have jurisdiction in chancery to issue injunctions and grant other relief in cases of fraud or collusion involving liens); id. § 222.09 (providing that the circuit court in equity can enjoin sales of property protected by homestead rights).
10. See Fla. Const. art. V, § 20(c)(3).
11. See Fla. Stat. § 26.012(2)(c) (1993) (stating that the circuit courts have exclusive original jurisdiction in all cases in equity). Therefore, § 34.01(4), which grants the county courts original jurisdiction in equity, directly conflicts with the above mentioned provisions.
12. Interview with Louis Nicholas, Counsel, Ocean Bank Legal Department, in Miami, FL (May 20, 1994).
time in litigation; it can even be raised for the first time on appeal.\textsuperscript{14} Attorneys began to use the jurisdictional conflict as a defense to challenge the validity of foreclosures of liens, including mortgages.\textsuperscript{15} Courts dismissed several cases on these grounds, resulting in delays in determining in which court to file.\textsuperscript{16} The validity of foreclosures under $15,000, decided since 1990, was questioned, resulting in obvious instability of land titles. The uncertainty was so great that most prudent title insurers issued notices, advising their clients that they would not insure titles obtained through foreclosures involving less than $15,000, the current jurisdictional amount limit for county courts.\textsuperscript{17}

A few lien foreclosure cases dealing with this issue were decided on questionable grounds in the district courts of appeal.\textsuperscript{18} Two of these cases were appealed to the Florida Supreme Court.\textsuperscript{19} In \textit{Nachon Enterprises Inc. v. Alexdex Corp.},\textsuperscript{20} the Third District Court of Appeal held that the county courts were courts of competent jurisdiction to decide lien foreclosures involving $15,000 or less.\textsuperscript{21} In \textit{Blackton, Inc. v. Young},\textsuperscript{22} the Fifth District Court of Appeal held that the amended section 34.01 superseded the state constitution,\textsuperscript{23} a surprising statement at first glance.\textsuperscript{24} Both cases held not only that county courts had jurisdiction to hear foreclosures within their jurisdictional amount, but further that the circuit courts did not have jurisdiction.\textsuperscript{25} On September 1, 1994, the Florida Supreme Court released its decision in the \textit{Nachon} case, ruling that the county and circuit courts have concurrent jurisdiction in equity for cases within the county courts'
However, the court’s reasoning is questionable, and leaves important issues unresolved, which may produce further litigation on the question of jurisdiction with respect to mortgage foreclosures.

The legislature proposed several bills to resolve the problem in various ways, the most drastic of which called for the abolition of the county courts altogether. All of the proposed changes died in the judiciary committee, apparently due to the passage of the bill creating the Article Five Task Force, which is conducting a complete review of the Florida Judiciary and will recommend the necessary changes in a report to be submitted by December 1, 1994. One of the alternatives that the task force will study is the creation of a single tier trial level court.

The purpose of this note is to inform Florida practitioners of the conflict which currently exists regarding equitable subject matter jurisdiction between the county and circuit courts. Following this Introduction, Part II will discuss the legislative evolution of equity jurisdiction in Florida’s trial level courts, and the changes made to section 34.01 of the Florida Statutes to grant increased subject matter jurisdiction to the county courts. Part III will discuss the courts’ recent decisions applying and interpreting the county and circuit court jurisdictional statutes and the arguments for and against equitable subject matter jurisdiction in the county courts. Part IV will discuss the impact that the uncertainty regarding which court has equity jurisdiction has had on the practice of real estate law. Part V will discuss the various alternatives proposed by the litigants, the Bar, and the legislature for resolving the conflict as well as the Florida Supreme Court’s decision in Nachon, holding that the two courts have concurrent jurisdiction.

II. TRADITIONAL EQUITY JURISDICTION IN FLORIDA’S TRIAL COURTS

A. Florida’s Current Court System

The 1973 revision of the judiciary article of the Florida Constitution provides that the judicial power of the state is vested in the supreme court,
district courts of appeal, circuit courts, and county courts.\textsuperscript{31} No other courts may be established by the state, by any political subdivision, or by any municipality.\textsuperscript{32} The Florida judicial system, in which all courts are created by the constitution, is distinguishable from the federal system, in that all federal courts are statutory, except the United States Supreme Court.\textsuperscript{33} This distinction is important because the Florida Legislature does not have the power to create or abolish any of the constitutionally mandated courts without amending the constitution.\textsuperscript{34} This greater separation of powers between the legislature and the judiciary in Florida implies that the legislature cannot tinker with the courts' jurisdiction in a way that would effectively strip any of these courts of their power.\textsuperscript{35} Because of this principle, the granting of jurisdiction in equity to the county courts, for actions within their jurisdictional amounts, may be unconstitutional because it strips the circuit courts of their exclusive jurisdiction in equity.\textsuperscript{36}

The jurisdiction of each of the courts created in article V is stated within the article,\textsuperscript{37} and is codified in the \textit{Florida Statutes}.\textsuperscript{38} Florida currently operates under a two-tier trial court system which is comprised of county and circuit courts.\textsuperscript{39} Article V, section 6 of the Florida Constitution provides that “county courts shall exercise the jurisdiction prescribed by general law” which “shall be uniform throughout the state.”\textsuperscript{40} Additionally, article V, section 20(4) states that the county courts have original jurisdiction in the following areas:

\begin{itemize}
\item 31. FLA. CONST. art. V, § 1.
\item 32. Id. See generally 13 FLA. JUR. 2D Courts and Judges §§ 8, 71-76 (1992) (discussing prior existence of inferior courts, which were abolished).
\item 33. U.S. CONST. art. III, § 1.
\item 35. See 13 FLA. JUR. 2D Courts and Judges § 32 (1992).
\item 36. See id.
\item 37. See FLA. CONST. art. V, § 20 (prescribing each court's subject matter jurisdiction).
\item 38. See FLA. STAT. §§ 26.012, 34.01 (1993) (codifying circuit court and county court jurisdiction, respectively); cf. 13 id. §§ 26, 28 (discussing the necessity of jurisdiction). See generally 13 FLA. JUR. 2D Courts and Judges § 22 (1992) (defining jurisdiction as “the power conferred on a court by the sovereign, vis-a-vis constitutional or statutory provisions, to take cognizance of the subject matter of a litigation and the parties brought before it and to hear and determine the issues and render judgment upon the issues joined”).
\item 39. This was not always the case. See 13 FLA. JUR. 2D Courts and Judges §§ 71-76 (1992) (discussing the former County Judges' Courts, Civil Claims Courts, Small Claims Courts, Small Claims Magistrates' Courts, Magistrates' Courts, Justice of the Peace Courts, and courts of chartered counties).
\item 40. FLA. CONST. art. V, § 6(2)(b).
\end{itemize}
[A]ll criminal misdemeanor cases not cognizable by the circuit courts, of all violations of municipal and county ordinances, and of all actions at law in which the matter in controversy does not exceed the sum of two thousand five hundred dollars ($2,500.00) exclusive of interest and costs, except those within the exclusive jurisdiction of the circuit courts.  

Similarly, article V, section 5, states that the circuit courts have "original jurisdiction not vested in the county courts," and article V, section 20(3) provides that the circuit courts have exclusive original jurisdiction "in all cases in equity including all cases relating to juveniles." As explicitly stated above, the Florida Constitution, as revised in 1968, states that the circuit court is the trial court empowered to act in equity.

At this point it should be recalled that equity was historically separate from law; there was a separate court of equity, also known as the chancery court, in which a petitioner could seek relief if he had clean hands and no

41. Id. § 20(4); see also Amended Brief of Amicus Curiae for the Real Property, Probate and Trust Law Section of the Florida Bar at 6, Alexdex Corp. v. Nachon Enters., Inc., 641 So. 2d 858 (Fla. 1994) (No. 81,765) [hereinafter Amended Brief of Amicus Curiae (Florida Bar)] (explaining the usage of article V, § 20).

Section 20 was included in the 1968 revised Constitution of Florida as a jurisdictional schedule and temporary transition provision for governance of jurisdiction until the legislature changed the statutes regarding jurisdiction of circuit courts and county courts. Since then, §§ 26.012 and 34.01 have been enacted, which basically are the statutory counterparts to § 20. Section 34.01 prescribes county court subject matter jurisdiction and § 26.012 prescribes circuit court subject matter jurisdiction. Amended Brief of Amicus Curiae (Florida Bar) at 6, Alexdex (No. 81,765).

The jurisdictional amount of the county courts increased in 1980 from $2500 to $5000. See Act of July 1, 1980, ch. 80-165, § 1, 1980 Fla. Laws 533, 533 (codified as amended at FLA. STAT. § 34.01(1) (1980)).

42. FLA. CONST. art. V, § 5(b). Section 5(b) also states:

The circuit courts shall have . . . jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

Id.

43. Id.

44. Id.
adequate remedy at law. With the advent of the rules of civil procedure, equity and law merged, although the distinction between the two forms of relief still exists and is important to maintain. "Strictly speaking, there is no such tribunal in the judicial system of Florida known as the 'chancery court,' though the circuit court of the state, when exercising its equity jurisdiction, is frequently spoken of as a chancery court."


46. See FLA. R. CIV. P. 1.040; see also 22 FLA. JUR. 2D Equity § 3 (1992).

47. For example, the distinction still exists when determining if there is a right to a jury trial. See 22 FLA. JUR. 2D Equity §§ 4-5 (1992).

48. See id. Courts and Judges § 8 (1992) (citing Beebe v. Richardson, 23 So. 2d 718 (Fla. 1945)).

Jurisdiction is different from the inherent powers of the courts in that "jurisdiction is conferred by constitutional and statutory authorization, whereas inherent powers do not depend upon express constitutional grant or on legislative will." Id. § 14 (1992). A court's power to act in equity has sometimes been regarded as inherent. See 22 id. Equity § 7. Nevertheless, equity does have a subject matter jurisdictional component because in some cases only courts of general jurisdiction have inherent powers. Id. Courts and Judges § 15. For example, the power to appoint a receiver, or to relieve a tenant from the forfeiture of his estate for failing to pay rent as required by his lease, although usually considered to be within the realm of equity, are inherent powers of a court unless otherwise controlled by statute. 13 FLA. JUR. 2D Courts and Judges § 15 (1992).

[However,] prior to the 1972 amendment of the Florida Constitution changing the jurisdiction of the County Courts, and the statutory changes effectuating this amendment, it was held that County Courts did not have inherent power to relieve a tenant from the forfeiture of his estate for failure to pay rent as required by his lease. 13 id. (footnote omitted). Courts of general jurisdiction are usually the ones considered to have certain inherent powers, which include equitable powers. Id. Following the tautology, the circuit courts, as courts of general jurisdiction, have inherent powers. The power to grant equitable relief is sometimes considered an inherent power. 22 id. Equity § 7. Therefore, the circuit courts are the courts with the power to grant equitable relief. See 22 id.

As the Florida trial level courts, the circuit and county courts are sometimes distinguished as courts of general and specific jurisdiction; the circuit court is the court of general jurisdiction, with powers that may not be curtailed by the legislature. 13 FLA. JUR. 2D Courts and Judges § 63 (1992); see also id. § 29 (stating that a presumption may be invoked in favor of the jurisdiction of a court of general jurisdiction; on the other hand, presumptions as to jurisdiction may not be invoked with regard to courts of limited jurisdiction). The facts on which jurisdiction for courts of limited jurisdiction rest must appear in the record.

The jurisdiction of the Circuit Court is general in that it has original jurisdiction of cases in equity and at law not cognizable by an inferior court. In other words, its jurisdiction is primarily residual. The jurisdiction of the courts
The legislature has codified the county courts' subject matter jurisdiction in section 34.01 of the *Florida Statutes*, in accordance with the constitution. The subject matter jurisdiction of the circuit courts is inferior to it is carved out of that given to the Circuit Court, so that its original jurisdiction is limited only at lower levels, and remains otherwise general and unlimited.

The circuit courts, as courts of general jurisdiction, are the highest trial courts in the State.

The fact that a court is one of general jurisdiction does not necessarily mean that it cannot be made a court of special and limited jurisdiction in certain cases. On the contrary, a court of general jurisdiction may have additional powers conferred on it by statute. In the exercise of such statutory powers, a court of general jurisdiction will be regarded and treated as a court of limited and special jurisdiction.

13 *id.* § 63 (footnotes omitted).

49. *FLA. STAT.* § 34.01 (1993). The statute provides, in relevant part:

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts;

(b) Of all violations of municipal and county ordinances; and

(c) As to causes of action accruing:

1. Before July 1, 1980, of all actions at law in which the matter in controversy does not exceed the sum of $2,500, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.

2. On or after July 1, 1980, of all actions at law in which the matter in controversy does not exceed the sum of $5,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.

3. On or after July 1, 1990, of actions at law in which the matter in controversy does not exceed the sum of $10,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.

4. On or after July 1, 1992, of actions at law in which the matter in controversy does not exceed the sum of $15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.

(2) The county courts shall have jurisdiction previously exercised by county judges' courts other than that vested in the circuit court by s. 26.012, except that county court judges may hear matters involving dissolution of marriage under the simplified dissolution procedure pursuant to Rule 1.611(c), Florida Rules of Civil Procedure or may issue a final order for dissolution in cases where the matter is uncontested, and the jurisdiction previously exercised by county courts, the claims court, small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties, including but not limited to the countries referred to in ss 9, 10, 11, and 24 of Art. VIII of the State Constitution, 1885.
similarly codified in section 26.012. Because of this exclusive original jurisdiction in equity, all foreclosures, large and small, whether involving mortgages or other liens, were brought in circuit court. This exclusive grant of jurisdiction in equity also meant that a county court case, in which a party raised an equitable defense, had to be transferred to the circuit court, resulting in delays. This problem was dealt with in 1980 when the

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(3) Judges of county courts shall be committing magistrates. Judges of county courts shall be coroners unless otherwise provided by law or by rule of the Supreme Court.

(4) 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.

Id.; see also id. § 34.011 (1993) (stating that county courts “have concurrent [jurisdiction] with the circuit court to consider landlord and tenant cases involving claims in amounts which are within its jurisdictional limitations,” including the power to issue injunctions, and that the county courts have exclusive jurisdiction within their monetary limits in cases involving possession of real property).

50. Id. § 26.012. The statute provides, in relevant part:

(1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution and except orders of judgments of a county court which are certified by the county court to the district court of appeal to be of great public importance and which are accepted by the district court of appeal for review. Circuit courts shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

(2) They shall have exclusive original jurisdiction:

(a) In all actions at law not cognizable by the county courts;

(b) Of proceedings relating to the settlement of the estates of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate;

(c) In all cases in equity including all cases relating to juveniles except traffic offenses as provided in chapters 39 and 316;

(d) Of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged;

(e) In all cases involving the legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011;

(f) In actions of ejectment; and

(g) In all actions involving the title and boundaries of real property.

Id.

51. See 22 FLA. JUR. 2D Equity § 7 (1992).

52. See Hollywood Food Ct., Inc. v. Hollowell, 588 So. 2d 243, 243 (Fla. 4th Dist. Ct. App. 1991) (per curiam) (involving Rule 1.170(j) of the Florida Rules of Civil Procedure, which requires transfer from county court to circuit court if any counterclaims or cross-claims to an action are outside the county court’s jurisdiction). But see Kugeares v. Casino, Inc.,
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legislature amended section 34.01(1)(c)(2) to permit the county courts to hear equitable defenses raised in cases at law within their jurisdiction. In 1990, the legislature made further changes in the jurisdiction of county courts.

B. The 1990 Legislative Changes to County Court Jurisdiction

In 1990, the Florida Legislature enacted law 90-269, which greatly expanded the subject matter jurisdiction of the county courts. This law, which became effective on October 1, 1990, increased the monetary jurisdiction of the county courts to the present limit of $15,000. In addition, the law provided 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.” Law 90-269 also deleted the sentence from section 34.01(1)-(c)(2) which stated, “[a]ll equitable defenses in a case properly before a county court may be tried in the same proceeding.” This deletion is crucial in attempting to understand what the legislature intended to accomplish through Law 90-269. The Staff Analysis and Economic Impact Report on 90-269 of the House of Representatives Committee on the Judiciary makes the following comment:

Arguably, small damage suits would move more quickly in the county court system resulting in time savings for the litigants. In addition, cases involving small amounts of damages that also involve equitable claims, defenses or remedies would now be able to remain in the county court rather than being transferred to circuit court which would appear to be a more efficient way to handle these cases. . . . There is a question as to whether granting jurisdiction to the county court to hear all matters in equity would require a constitutional amendment,

372 So. 2d 1132, 1134 (Fla. 2d Dist. Ct. App. 1979) (holding that county court had jurisdiction to consider equity defenses in suits in which the landlord seeks to regain possession of leased premises).

55. Id. at 1972 (codified at FLA. STAT. §§ 34.01(1)(c)(4) (1993)).
56. Id. at 1973. Note also that chapter 90-269 amended § 86.011 to authorize county courts to render declaratory judgments. Id. § 3, 1990 Fla. Laws at 1973. The precise wording of the law seems to evidence the legislature’s intent, and will later be shown to support the argument that there is actually no conflict, and that the law may have been misinterpreted.
57. Id. at 1972.
however, the Florida Constitution provides that county courts “shall exercise jurisdiction as prescribed by general law...” (Art. V, s. 6., Fla. Const.), and that circuit courts “shall have original jurisdiction not vested in the county courts...”(Art. V, s. 5., Fla. Const.).

The Staff Analysis Report also explains that section 86.011 of the Florida Statutes, relating to the issuance of declaratory judgments, was amended to conform with the provision in the law “that grants equity jurisdiction to the county court,” and that the grant of equity jurisdiction does not apply to divorce cases.

The question is whether the legislature intended to expand or limit the county courts’ powers in equity when it replaced the provision that “all equitable defenses in a case properly before a county court may be tried in the same proceeding” with “[j]udges 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.” The county courts were already able to decide equitable defenses raised in actions clearly within their jurisdiction without having to transfer such cases to the circuit court. The new phrase, “all matters in equity involved in any case within the jurisdictional amount of the county court” seems to be merely a rephrasing of the prior provision, with “matters” implying not only equitable defenses, but also equitable counterclaims and other equitable remedies which are not defenses. The new phrasing still states, however, that the county court “may” hear such equitable matters which are “involved in any case within the jurisdictional amount of the county court.” This seems to imply that the equitable matters which can be considered must be within a legal “case,” and that the “case” itself cannot be purely equitable. In other words, if a legal case clearly within the jurisdiction of the county court raises an issue in equity, the county court can decide that issue, but this does not mean that a county court can hear a purely equitable matter not involved within a legal case. This interpretation is entirely consistent with the Judiciary Committee’s Staff Analysis Report, which states that “cases involving small amounts of

58. Staff of Fla. H.R. Comm. on the Judiciary, CS for HB 1061 (1990) Staff Analysis 3-4 (1990) [hereinafter Staff Analysis] (on file with comm.).
59. Id.
60. Ch. 80-165, § 1, 1980 Fla. Laws at 533.
62. See ch. 80-165, § 1, 1980 Fla. Laws at 533.
63. Ch. 90-269, § 1, 1990 Fla. Laws at 1973 (emphasis added).
64. Id.
damages that also involve equitable claims, defenses or remedies would now be able to remain in the county court rather than being transferred to circuit court which would appear to be a more efficient way to handle these cases.\textsuperscript{65} Clearly an action for money damages is an action at law, and there is no broad grant of equitable jurisdiction without the above mentioned qualifications in either the actual law or the Staff Analysis Report.\textsuperscript{66} The preamble of chapter 90-269, however, does seem to imply a broader grant of equitable jurisdiction; it states that the Act provides “a county court may hear all matters in equity that are within jurisdictional amount.”\textsuperscript{67} However, the new provision granting equitable power to county courts is expressly restricted by the phrase “except as otherwise restricted by the State Constitution or the laws of Florida.”\textsuperscript{68} This exception seems to refer to section 26.012(2)(c) which grants the circuit courts exclusive original jurisdiction in “all cases in equity,” which is different from saying “all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted.”\textsuperscript{69} It seems, therefore, that the limited grant of equity jurisdiction in 90-269 was intended only to increase trial court efficiency by eliminating the needless delay which results in cases which are properly brought in county courts but must be transferred to circuit courts.\textsuperscript{70}

The legislature failed, however, to make its intention clear in the wording of section 34.01(4), especially in light of the conflicting provision in section 26.012(2)(c).\textsuperscript{71} As a result, there has been significant confusion and debate as to the proper construction of the two jurisdictional statutes.\textsuperscript{72} Guided by the apparent legislative intent to increase the responsibility of the county courts and to lighten the burden of the circuit courts, as signified by the considerable increases in monetary limits of the county courts, some practitioners have construed section 34.01(4) to give the county courts

\begin{itemize}
\item \textsuperscript{65} Staff Analysis, \textit{supra} note 58, at 3.
\item \textsuperscript{66} In fact, if the legislature wanted to grant the county courts full powers in equity within their jurisdictional amounts, it could have merely changed sections 34.01(1)(c)3-4 of the \textit{Florida Statutes} to read “actions at law and in equity.” It did not do so.
\item \textsuperscript{67} Ch. 90-269, §1, 1990 Fla. Laws at 1972. \textit{See generally} \textit{49 FLA. JUR. 2D Statutes} §§ 62-90 (1992) (discussing the constitutional requirements for titles and legislation).
\item \textsuperscript{68} Ch. 90-269, § 1, 1990 Fla. Laws at 1973.
\item \textsuperscript{69} \textit{See id.} (emphasis added).
\item \textsuperscript{70} \textit{See Staff Analysis, supra} note 58, at 3.
\item \textsuperscript{71} The conflicting provision provides that the circuit courts have exclusive original jurisdiction in “all cases in equity.” \textit{See FLA. STAT.} § 26.012(2)(c) (1993).
\item \textsuperscript{72} \textit{See infra} part IV.
\end{itemize}
jurisdiction to hear small foreclosures. However, this interpretation conflicts not only with section 26.012(2)(c), but also with section 26.012(2)(g) which provides that the circuit courts have exclusive original jurisdiction in all cases "involving the title and boundaries of real property." Foreclosures of liens on real property, including mortgages, are usually understood to involve title to real property because the product of a foreclosure is a sale and accompanying transfer of ownership. Therefore, if there was any doubt that foreclosure was under the jurisdiction of the circuit courts because of the new equitable jurisdiction provision of 34.01(4), then this "title and boundaries" provision seems to ensure that at least all foreclosures of real property are within the circuit courts' jurisdiction.

The practitioners who have construed section 34.01(4) to grant the county courts jurisdiction to hear foreclosures not exceeding $15,000 have been forced to argue that section 26.012(2)(c) is not a law that restricts the application of section 34.01(4) and that their foreclosure action does not involve title and boundaries to real property.

III. Litigation Involving the 1990 Changes

A. Spradley v. Doe

The first case to raise the issue of the county courts' increased subject matter jurisdiction in equity was Spradley v. Doe. The plaintiff, Spradley,
appealed the Circuit Court of Leon County’s dismissal of his civil rights action, in which he sought a declaratory judgment and damages in the amount of $950. Spradley argued on appeal that the circuit court lacked subject matter jurisdiction, and that the action, which requested both equitable relief and money damages, was within the jurisdictional amount of the county courts. The First District Court of Appeal agreed, reversing the circuit court’s dismissal, and transferring the action to the county court.

The First District Court of Appeal acknowledged that “matters in equity” have historically been heard only in circuit courts, citing section 26.012(2)(c). The court then addressed the 1990 amendment to sections 34.01 and 86.011, which it construed to be a full grant of equity jurisdiction to the county courts for cases within their jurisdictional amounts. The court stated:

Un fortunately, the legislature failed to amend section 26.012 by deleting the provisions therein, which stated that the circuit courts have exclusive equitable jurisdiction. Thus, because the grant of equity jurisdiction to county courts in section 34.01(4) is restricted by section 26.012(2)(c), vesting equitable matters exclusively in the circuit courts, an irreconcilable inconsistency exists between the two statutes.

Under circumstances in which statutory provisions are inconsistent and cannot be harmonized, a court must reach a construction that will give effect to the purpose of the statute and the legislative intent. One important maxim of statutory construction is that the last expression of the legislature prevails.

The clear intent of the legislature was to expand county court jurisdiction over certain specified equitable matters. This intent is reflected not only by the express language employed in section 34.01(4), but as well by the title to Chapter 90-269 [the act provides “that a county court may hear all matters in equity that are within jurisdictional amount,” instead of referring to “all matters in equity involved in any case. . . .”]. Section 34.01(4) is clearly consistent with the expressed legislative purpose, and, because it is the last expression of legislative will, it should prevail. We therefore construe section 34.01(4) as granting equitable jurisdiction to county courts over matters within those
courts' jurisdictional amounts, despite the existence of the patent inconsistency in section 26.012(2)(c). 84

Although Spradley involved a civil rights action by a pro se prisoner seeking a declaratory judgment, 85 it established a precedent for interpreting section 34.01(4) as requiring actions in equity not exceeding $15,000 to be brought in the county courts. 86 Section 34.01(4) was now construed to deny the circuit courts subject matter jurisdiction in equity when the case involves $15,000 or less. 87 The court did not address the fact that section 34.01(4) does not mandate that such actions be brought only in the county courts; the wording only states that county courts "may" hear such matters involved in a case within their jurisdictional amount. 88 The case was not appealed.

B. Nachon Enterprises Inc. v. Alexdex Corp.

Shortly after the decision in Spradley, the Third District Court of Appeal decided a case which caused great concern in the area of real property. It involved the foreclosure of a construction lien in the amount of $4,140.44. 89 Nachon Enterprises filed a notice of lis pendens to establish and foreclose its lien in the County Court of Dade County. 90 The defendant responded by filing a complaint in the Circuit Court in Dade County (Eleventh Judicial Circuit) to show cause and to discharge the lien, pursuant to section 713.21(4) of the Florida Statutes. 91 Section 713.21(4) specifies that complaints to show cause why a lien should not be discharged must be filed in the circuit court, not the county court. 92 Nachon filed a

84. Id. (citations omitted)
85. Id.
86. Id. at 724.
87. Id.
88. The meanings of the words "may" and "shall" differ greatly. See 49 FLA. JUR. 2D Statutes § 18 (1992).
89. Nachon, 615 So. 2d at 246.
90. Id.
91. Id. at 247.
92. FLA. STAT. § 713.21(4) (1993). If county courts were now empowered to hear lien foreclosure cases, this section should have also been amended to conform to § 34.01(4). Richard Burton, counsel for Alexdex, used this argument in his brief to the Third District Court of Appeal:

Chapter 713.21(4) is specific that all actions in response to a Rule to Show Cause must be brought in Circuit Court. This specific jurisdictional requirement has been readopted during the Legislature's reexamination of the Mechanic Lien
motion to dismiss the defendant's complaint in the circuit court, based upon the pendency of the foreclosure filed in the county court. The circuit court denied Nachon's motion to dismiss and discharged Nachon's lien. The court held that the foreclosure pending in the county court did not satisfy the statutory requirement that an action to enforce a lien must commence in a court of competent jurisdiction within one year of recording a claim of lien. The holding implied that the county court was not a court of competent jurisdiction to hear lien foreclosures, even when they involve amounts within the county court's monetary jurisdiction.

Nachon appealed to the Third District Court of Appeal, arguing that the foreclosure action filed in county court was a valid action, complying with the one year statute of limitations under section 713.22(1) for enforcing construction liens. The district court agreed and, without referring to Spradley, stated:

Pursuant to this section [34.01(4)], a "court of competent jurisdiction" to hear foreclosure actions, which are equitable in nature, now includes the County Court. Unlike an action to quiet title, which is within the exclusive jurisdiction of the Circuit Court, see s. 26.012(2)(g), Fla. Stat. (1991), the foreclosure action at issue here is not an action "involving the title and boundaries of real property." Thus, 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.

Statute and specifically the granting of the jurisdiction in the Circuit Court overrides any general jurisdictional grant through section 34.01 of Florida Statutes, as amended.

Appellee's Reply Brief at 1, Nachon Enters. Inc. v. Alexdex Corp., 615 So. 2d 245, 246 (Fla. 3d Dist. Ct. App.) (No. 92-01456), review granted, 626 So. 2d 203 (Fla. 1993), and approved, 641 So. 2d 858 (Fla. 1994).

93. Nachon, 615 So. 2d at 246. In Nachon's reply brief, it stated that Nachon did attempt to transfer the county court lien foreclosure action to the circuit court, but the motion was denied by administrative judge order, finding no basis for the transfer; Nachon used this to argue that the lien foreclosure action had been properly brought in the county court. Appellant's Reply Brief at 2, Nachon Enters. Inc. v. Alexdex Corp., 615 So. 2d 245, 246 (Fla. 3d Dist. Ct. App.) (No. 92-01456), review granted, 626 So. 2d 203 (Fla. 1993), and approved, 641 So. 2d 858 (Fla. 1994).

94. Nachon, 615 So. 2d at 246.

95. Id.

96. Appellant's Initial Brief at 5, Nachon Enters. Inc. v. Alexdex Corp., 615 So. 2d 245 (Fla. 3d Dist. Ct. App.) (No. 92-01456), review granted, 626 So. 2d 203 (Fla. 1993), and approved, 641 So. 2d 858 (Fla. 1994).

97. Nachon, 615 So. 2d at 246-47 (citations omitted).
Thus, the district court construed section 34.01(4) as denying the circuit courts jurisdiction in equity cases not exceeding $15,000, including construction lien foreclosures, because they do not involve title and boundaries to real property.98

The Third District Court of Appeal’s reasoning in its decision is troubling. The court never acknowledged any inconsistency between sections 34.01(4) and 26.012(2)(c).99 First, it equated the phrase in 34.01(4), “all matters in equity involved in any case,” with actions solely in equity.100 Second, the court construed the exception in section 34.01(4) [“except as otherwise restricted by the State Constitution or the laws of Florida”] as referring only to section 26.012(2)(g), which provides that circuit courts have exclusive original jurisdiction in all actions “involving title and boundaries to real property.”101 The court did not attempt to explain how the circuit courts could have exclusive original jurisdiction in all cases in equity and yet not have exclusive original jurisdiction when the amount in controversy is under $15,000. If the restriction in section 34.01(4) was intended to refer only to section 26.012(2)(g), the use of language as encompassing as “the State Constitution or the laws of Florida” was unnecessary.

Even if the restriction in section 34.01(4) referred only to section 26.012(2)(g) (that the county courts’ equity jurisdiction is restricted only in the area of actions involving title and boundaries to real property), as the Third District Court of Appeal suggests, a construction lien foreclosure such as Nachon’s would necessarily involve title to real property.102 Nevertheless, the Nachon court stated that construction lien foreclosures do not involve title and boundaries to real property.103 In making this assertion, the court stated that the provision in section 26.012(2)(g) concerning actions “involving title and boundaries to real property” meant only actions to quiet title.104 In support of its position, the court cited several landlord-tenant and unlawful detainer cases to demonstrate that there are actions which deal with real property but do not involve title or boundaries.105 The cases

98. Id.
99. See id.
100. Id.
101. Id.
102. See supra note 5.
103. Nachon, 615 So. 2d at 246-47.
104. Id.
105. Id. (citing Spector v. Old Town Key West Dev., Ltd., 567 So. 2d 1017 (Fla. 3d Dist. Ct. App. 1990) (declaratory relief and appointment of a receiver); Kugares, 372 So. 2d at 1132 (landlord-tenant possession action); Williams v. Gund, 334 So. 2d 314 (Fla. 2d
cited referred only to the power of a county court hearing such cases to hear equitable defenses. Landlord-tenant cases involve disputes over the possession and not the title to real property and have historically been within the jurisdiction of the county courts. Lien foreclosures are quite different from possessory actions.

An action to foreclose a mechanic’s lien, like an action to foreclose a mortgage on land, is an action seeking to judicially convert a lien interest (an equitable 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 the real property.

Lien foreclosures are usually considered to be in rem or quasi in rem actions. Condemnation actions, partition actions, ejectment actions, and quiet title actions are other examples of in rem actions where the res is real property. With this in mind, it would seem that the phrase “involving title and boundaries to real property” may be referring not only to quiet title actions, but also to any actions where the res is real property. More importantly, a foreclosure action in enforcement of a construction lien or a mortgage does necessarily fall into the category represented by section 26.012(2)(g).

Dist. Ct. App. 1976) (action for damages and for unlawful detainer)). The cases were closely scrutinized by the Florida Bar’s Real Property, Probate and Trust Law Section in their amicus brief filed in the Nachon supreme court appeal. Amended Brief of Amicus Curiae (Florida Bar) at 6, 15, 16, Alexdex (No. 81,765).

See supra note 105.

See FLA. STAT. § 34.011 (1993).

Possessory actions usually do not involve disputes over title, only possession. Usually someone who has title seeks to oust someone who does not, as is the case with landlord-tenant situations. Lien foreclosures, on the other hand, seek to force a sale of a property, with the accompanying transfer of title, in order to satisfy an unpaid debt. The claimant’s main interest is usually to be reimbursed and not to take possession of the property.

Publix Super Mkts., Inc. v. Cheesbro Roofing, Inc., 502 So. 2d 484, 486 (Fla. 5th Dist. Ct. App. 1987). Alexdex made this argument before the Florida Supreme Court. See infra note 168.

Publix, 502 So. 2d at 486-87. “A suit to foreclose a mortgage is to a certain extent and for certain purposes a proceeding in rem, since it is primarily directed against the mortgaged property, but it is more accurately termed ‘quasi in rem.’” Id. at 487.

Id. at 486.

Cf. Appellee’s Reply Brief at 3, Nachon (No. 81,765) (citing Scott v. Premium Dev., Inc., 328 So. 2d 557 (Fla. 1st Dist. Ct. App. 1976) for its discussion of the drastic effect a mechanic’s lien has on the use and alienation of real property); see also supra note
Alexdex Corporation appealed to the Florida Supreme Court. Oral arguments were heard in January 1994. Nine months later, the supreme court issued its per curiam decision, holding that county and circuit courts have concurrent jurisdiction, partially affirming the Third District Court of Appeal’s decision. The substance of the parties’ arguments, several amicus curiae briefs filed in the case, and the court’s decision will be discussed in part V to elucidate the factors that may have influenced the court’s decision.

C. Brooks v. Ocean Village Condominium Ass’n

Brooks v. Ocean Village Condominium Ass’n was the second case decided by the Third District Court of Appeal regarding the jurisdiction of county courts to decide foreclosures. Brooks involved a condominium assessment lien foreclosure, which the condominium association had brought in circuit court. The court held that condominium assessment lien foreclosures not exceeding $15,000 are within the exclusive jurisdiction of the county courts. In a short opinion, which was based upon its prior holding in Nachon, the court did express recognition of the developing controversy, stating that, in holding that the county court had jurisdiction in Nachon, it was agreeing with the rationale in Spradley. Additionally, in a footnote to the opinion, the court stated: “We urge the legislature to take action to correct the conflict now existing between paragraph 26.012-(2)(c), Florida Statutes (1991), and subsection 34.01(4), Florida Statutes (1991). In our view the statutes prescribing the jurisdiction of the county and circuit courts should be clear and unequivocal.” The court here recognized the clear conflict, which it ignored in Nachon, with respect to sections 26.012(2)(c) and 34.01(4), and seemed to retreat from its interpretation of section 26.012(2)(g) in Nachon, holding that lien foreclosures do not involve title and boundaries to real property.

113. Alexdex, 641 So. 2d at 858.
114. Id.
115. Id. at 860.
117. Id.
118. Id.
119. Id.
120. Id. at 112 n.2 (citation omitted).
121. Brooks, 625 So. 2d at 112 n.2.; see infra part V. As urged by ARDA in its amicus brief in the Nachon supreme court appeal, this case can be used as an example of the proper
D. Blackton, Inc. v. Young

The most recent case dealing with this issue in the context of lien foreclosures is Blackton, Inc. v. Young.122 Relying on Nachon, the Fifth District Court of Appeal held that the circuit court did not have subject matter jurisdiction over the foreclosure of the $757.05 lien involved in the case.123 The court used the exact reasoning employed by the Third District in Nachon—that foreclosures do not "involv[e] . . . title and boundaries . . . [t]o real property."124 The Blackton court, however, was more thorough in its explanation:

There are several constitutional provisions which restrict the county courts' jurisdiction. Specifically, Article V, Section 6(b), Florida Constitution provides that county courts shall exercise the jurisdiction prescribed by general law. Additionally, Article V, Section 20(e)(3), Florida Constitution provides that circuit courts shall have exclusive original jurisdiction in all actions at law not cognizable by county courts, in all cases in equity and in all actions involving the titles or boundaries or right of possession of real property (emphasis supplied). Article V is effective from January 1, 1973 until changed by general law. FLA. CONST. art. V ss 20(c), (j).

Notably, there is an inconsistency between Article V, Section 20(e)(3), Florida Constitution which vests circuit courts with exclusive original jurisdiction in all actions involving the titles or boundaries of real property [and in all equity actions] and section 26.012(2)(g), Florida Statutes (1991) which vests circuit courts with exclusive original jurisdiction in all actions involving title and boundaries of real property (emphasis supplied). However, Article V, Sections 20(c) and (j), Florida Constitution specifically provide that Article V is effective from January 1, 1973 until changed by general law. In 1974, the legislature changed the language in section 26.012(2)(g), Florida Statutes (1973) giving circuit courts jurisdiction in "all actions involving the title,

method of asserting the amount in controversy. Ocean Village sought to foreclose its claim of lien for condominium assessments of $3984.44. Knowing that the real property value of the condominium was approximately $50,000, the court concluded that the county court had proper jurisdiction because the plaintiff's good faith amount in controversy was below the $15,000 county court jurisdictional amount. Amicus Curiae Brief of American Resort Development Association at 16, Alexdex Corp. v. Nachon Enters., Inc., 641 So. 2d 858 (Fla. 1994) (No. 81,765) [hereinafter Amicus Curiae Brief (ARDA)].

122. 629 So. 2d 938 (Fla. 5th Dist. Ct. App. 1993), review granted, 639 So. 2d 976 (Fla. 1994).
123. Id. at 941.
124. Id. at 940.
boundaries, or right of possession of real property". . . . See s 26.012(2)(g), Fla. Stat. (1974 Supp). Additionally, section 34.01(4), Florida Statutes (1991), which expands the circuit courts’ equity jurisdiction to include county courts, became effective October 1, 1990. These provisions thereby supersede the constitutional provision. 125

The court seemed to place the inconsistency in the wrong part of the statute. First, the court need not have referred to section 26.012(2)(g), stating that circuit courts have exclusive original jurisdiction “in all actions involving title and boundaries of real property.” Presumably, if we accept the court’s reasoning that lien foreclosures are not actions involving title and boundaries to real property, then this section does not apply. 126 Therefore, the conflict as to which court can hear lien foreclosures was due only to the changes in section 34.01(4), which refer to “matters in equity involved within any case.” 127 The court did not attempt to resolve the patent conflict between section 34.01(4) and 26.012(2)(c), stating only that the circuit court’s equity jurisdiction is now expanded to include the county courts. 128 This statement is contradictory; how can a court expand its own jurisdiction by giving part of it away to another court? This statement could be interpreted to mean that the circuit court had not given up any of its equity jurisdiction to the county court, meaning that the circuit and county courts have concurrent jurisdiction. But this interpretation conflicts with the outcome of the case, which affirmed the circuit court’s dismissal for lack of subject matter jurisdiction. 129 Furthermore, section 34.01(4) is limited by the phrase “except as otherwise restricted by the Constitution or the laws of Florida.” 130 Section 26.012(2)(c), which fits this description, states that

125. Id.
126. Cf. Appellant’s Reply Brief at 6, Blackton, Inc. v. Young, 629 So. 2d 938 (Fla. 5th Dist. Ct. App. 1993) (No. 93-2214), review granted, 639 So. 2d 976 (Fla. 1994) (referring to Florida’s Marketable Record Title Act, FLA. STAT. §§ 712.01-10 (1993)). Section 712.01(3) defines “title transaction” as “any recorded instrument or court proceeding which affects title to any estate or interest in land and which describes the land sufficiently to identify its location and boundaries.” Lien foreclosures fall under that definition, urged counsel for Blackton, Inc. The appellant’s counsel also used the fact that the property owner is an indispensable party, that a foreclosure action not seeking a deficiency decree is purely in rem, and that the legal description must be in the foreclosure complaint, to support the assertion that foreclosures do involve title and boundaries. See Appellant’s Reply Brief at 7-8, Blackton (No. 93-2214).
127. FLA. STAT. § 34.01(4) (1993).
128. Blackton, 629 So. 2d at 940.
129. Id. at 941.
130. FLA. STAT. § 34.01(4) (1993).
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circuit courts have exclusive original jurisdiction in all cases in equity.\textsuperscript{131} Blackton appealed to the Florida Supreme Court, and the court accepted jurisdiction on May 3, 1994, in light of theNachon appeal.\textsuperscript{132}

IV. THE IMPACT OF THE UNCERTAINTY

Nachon and its progeny generated considerable discussion and debate in the real estate industry. Although the cases decided involved foreclosures of construction liens and condominium assessment liens, most practitioners believed that mortgage foreclosures would be treated similarly.\textsuperscript{133}

Several major title insurers, who know all too well how foreclosures "involve title and boundaries" of real property, issued bulletins to policy issuing agents and lenders. The bulletins stated that because of the current conflict, the insurability of title coming through foreclosures not exceeding $15,000 was being curtailed.\textsuperscript{134} Some companies refused to insure such

\textsuperscript{131} Id. § 26.012(2)(c).
\textsuperscript{132} Blackton, Inc. v. Young, 639 So. 2d 976 (Fla. 1994).
\textsuperscript{133} Interview with Louis Nicholas, Counsel, Ocean Bank Legal Department, in Miami, FL (May 20, 1994).
\textsuperscript{134} See, e.g., Memorandum from Patricia P. Jones, Underwriting Manager, Attorneys’ Title Insurance Fund, to All Fund Agents (June 7, 1993) (on file with author), which advises:

As many of you are aware, uncertainty currently exists on the issue of whether the circuit or county court is the proper court to hear foreclosure amounts involving liens of 15,000 or less. In many of Florida’s judicial circuits, foreclosure actions involving these types of liens are being transferred from circuit court to county court. See, 1990 and 1992 amendments to Ch. 34, F.S., giving county courts jurisdiction to hear matters in equity and increasing the jurisdictional “amount in controversy” threshold to $15,000. The recent case ofNachon Enterprises v. Alexdex Corporation, 18 FLW D678 (Fla. 3d DCA 1993), upholding the validity of foreclosure actions brought in county court, has added momentum to this process.

TheNachon, supra, case is being appealed, and if it is reversed, all foreclosure actions decided in county court since October 1, 1990, may be void for lack of subject matter jurisdiction. See, Art. V, Sec. 20 Fla. Const. 1968 (as amended), and sec.26.012, F.S. which provide that exclusive jurisdiction to hear matters involving title and boundaries to real property is vested in the circuit courts.

On the other hand, the recent case ofSpradley v. Doe, 612 So. 2d 722 (Fla. 1st DCA 1993) has cast doubt on the validity of small lien foreclosures in circuit court, by holding that circuit courts lack subject matter jurisdiction to hear matters in equity when the amount in controversy is within the jurisdictional limit of the county court.

Until the Supreme Court of Florida detects the question of the proper court to hear these types of foreclosure actions, The Fund will not authorize the
titles regardless of the court in which the foreclosure judgment was obtained.\textsuperscript{135} An additional indication of the impact that the uncertainty has had on real estate law is the fact that the Attorney’s Title Insurance Fund discussed the Nachon and Brooks cases in their Annual Fund Assembly Seminar in Orlando, Florida held on May 12-14, 1994.\textsuperscript{136}

Several amici curiae,\textsuperscript{137} who filed briefs in the Nachon supreme court appeal, effectively described the worst case scenario: Title through foreclosure is declared void because of a judgment entered by a court lacking subject matter jurisdiction.\textsuperscript{138} One group of amici curiae, comprised of title insurers and one lender, expressed its views about the implications of the confusion in the following manner:

A person purchases vacant land at a foreclosure sale, or buys the property from the successful bidder. The new purchaser builds his or her dream home on the land. Since the underlying judgment would be void, and the title defective, a title pirate could buy the foreclosed owner’s interest for a nominal sum, and then hold the title for ransom at the expense of the innocent buyer or the title insurance company which insured the title out of foreclosure.

This is not the stuff of mere speculation, but a harsh reality were the Florida Bar’s interpretation of the statutes and Constitution followed

\textsuperscript{135} See supra note 131.

\textsuperscript{136} Annual Fund Assembly Seminar, Attorneys’ Title Insurance Fund, in Orlando, FL (May 12-14, 1994).


\textsuperscript{138} See supra note 136.
by this court. It is this Court's duty to search out an interpretation which would avoid this precise result.\textsuperscript{139}

Another organization whose interests were affected by the uncertainty regarding in which court to file small foreclosures is the American Resort Development Association ("ARDA").\textsuperscript{140} The amicus curiae brief explained:

Each year ARDA's members file large number of mortgage or claim of lien foreclosure actions in amounts below $15,000.00. Subsequent to retaking title to a timeshare interest by foreclosure, ARDA's members offer to sell these timeshare interests to the general public. However, title insurance companies are unwilling to issue title insurance until the court has made a determination as to the proper court to hear foreclosure matters. Without title insurance, a timeshare interest is virtually unsalable.\textsuperscript{141}

ARDA described its own version of the worst case scenario:

There are approximately 780,810 timeshare unit weeks in Florida. In Lee County alone there are 60,000 timeshare unit weeks. All Lee County foreclosure actions with an Amount in Controversy below $15,000 must be filed in county court. If only one percent of the 60,200 timeshare unit weeks went into foreclosure over the last three years, over 600 void judgments would result if the circuit courts are held to have exclusive jurisdiction.\textsuperscript{142}
The confusion also impacted the courts. The circuit courts began issuing administrative orders requiring lien foreclosures not exceeding $15,000 to be brought in county courts. For example, "Lee and Collier County Circuit Courts, in Administrative Order Number 1.7, require that 'all mortgage and lien foreclosure actions filed within the Twentieth Judicial Circuit shall come within the jurisdiction of the County court if the amount in controversy does not exceed Fifteen Thousand ($15,000.00) Dollars.'"


A. The Litigants' Arguments to the Florida Supreme Court

Alexdex Corporation appealed the Third District Court of Appeal's decision to the Florida Supreme Court. The supreme court heard oral arguments in January of this year and released its decision on September 1, 1994. The court held that county and circuit courts have concurrent jurisdiction in equity, partially affirming the district courts decision. Interestingly, the construction lien involved in the Nachon case was transferred to bond before the supreme court appeal was filed. This would seem to have made the claim strictly monetary because title to property was no longer at stake. However, the issue of whether the county court had jurisdiction was still relevant in Nachon. If it had been decided that the county courts lacked jurisdiction to hear lien foreclosures, Nachon’s lien would have been discharged because Nachon did not file its

143. Amicus Curiae Brief (Stewart) at 9, Alexdex (No. 81,765).
144. Id.
145. Alexdex, 641 So. 2d at 858.
146. Id. at 860.
147. Telephone Interview with Luis Consuegra, General Counsel, Ocean Bank, in Miami, FL (June 7, 1994). Mr. Consuegra advised that Ocean Bank, in its underwriting of a loan to be secured by the property involved in Nachon, required that Nachon’s lien be transferred to bond to clear the title on the subject property. Id.; see also Appellant’s Initial Brief at 3, Alexdex (No. 81,765). The brief stated that on July 30, 1992, prior to the Third District Court of Appeal’s decision, 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 issue presented by the lien being transferred to bond was whether the action was converted into a purely monetary action, no longer involving real property.
suit in a “court of competent jurisdiction” within the specified time.\footnote{See FLA. STAT. § 713.21(4) (1993).}

The supreme court appeal garnered great publicity, having been reported in the Florida Bar Journal.\footnote{Ronald D. Waller, Annual Report Sections and Divisions of the Florida Bar, Real Property, Probate and Trust Law, FLA. B.J., June 1994, at 19, 41.} The legislature seems to have been waiting for the decision to give it guidance on how to proceed.\footnote{See Bill Will Establish Art. V Study Panel, FLA. B. NEWS, Apr. 15, 1994, at 5.} As mentioned earlier, title insurance companies discussed the case in seminars, and issued notices regarding the Third District Court of Appeal’s decision.\footnote{See supra note 134.} Several amicus curiae briefs were submitted, including one by the Florida Bar Real Property, Probate and Trust Section, arguing that foreclosures should be kept under the jurisdiction of the circuit courts.\footnote{See infra note 173.} On appeal the litigants were primarily concerned with prevailing in their immediate action; concerns about how the decision would affect the practice of real estate law were given much less attention. Nachon argued in its supreme court brief that a distinction exists between actions which “involve” title to real property and actions which “affect” title, and that lien foreclosures affect title but do not involve title.\footnote{Respondent’s Brief on the Merits at 4, Alexdex Corp. v. Nachon Enters., Inc., 641 So. 2d 858 (Fla. 1994) (No. 81,765) [hereinafter Respondent’s Brief]. The definition of “affect” is: “To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things. To lay hold of or attack (as a disease does); to act, or produce an effect or result upon; to impress or influence (the mind or feelings); to touch.” BLACK’S LAW DICTIONARY 57 (6th ed. 1990). The definition of “involve” is: “to enfold or envelop; to make intricate or complicated; to entangle in difficulty, danger, etc.; implicate; to draw or hold within itself; include or entail; to relate to or affect.” WEBSTER’S NEW WORLD DICTIONARY 396 (2d ed. 1975).} Nachon stated that an action to foreclose a construction lien is not an example of an action involving title to land.\footnote{Respondent’s Brief at 4, Alexdex (No. 81,765).} Its counsel reasoned:

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 land.\textsuperscript{156}

Nachon argued that because a lien foreclosure judgment can be satisfied by the payment of money, it does not necessarily involve the judicial determination of rights to the title of property.\textsuperscript{157} Nachon further stated: “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.”\textsuperscript{158} This statement is true but irrelevant. It is true that the circuit court does not have jurisdiction in all actions “affecting” real property; it lacks jurisdiction to hear a landlord-tenant action which “involves” possession and is one “affecting” real property.\textsuperscript{159} However, as discussed previously, it seems illogical to argue that a foreclosure action does not “involve” and “affect” title to real property.\textsuperscript{160} Nachon further argued in its answer brief on jurisdiction, that if a lien foreclosure involves title to real property, then any action seeking a judgment for money damages could be considered an action involving title to real property because the money “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.”\textsuperscript{161} This conclusion seemed to implicitly admit that the lien foreclosure stated in his hypothetical was an action involving title to real property.

The petitioner, Alexdex, in its supreme court reply brief, stressed the distinction between the creation of a lien and its foreclosure in determining

\textsuperscript{156} Id.

\textsuperscript{157} Id. at 6 (citing McMullen v. McMullen, 122 So. 2d 626 (Fla. 2d Dist. Ct. App. 1960). \textit{But see supra} note 108 (lien foreclosures require the court to act directly on the title to the property).

\textsuperscript{158} Respondent’s Brief at 7, \textit{Alexdex} (No. 81,765).

\textsuperscript{159} \textit{See, e.g.,} EMSA Ltd. Partnership \textit{v.} Community Health Related Servs., Inc., 615 So. 2d 258, 259 (Fla. 3d Dist. Ct. App. 1993) (holding that county court had exclusive subject matter jurisdiction over the right of possession).

\textsuperscript{160} In fact, one of the cases Nachon cited, \textit{In re} Estate of Weiss, 106 So. 2d 411 (Fla. 1958), seemed to contradict rather than support Nachon’s argument:

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.

\textit{Id.}; Respondent’s Brief at 7, \textit{Alexdex} (No. 81,765).

\textsuperscript{161} Respondent’s Answer Brief on Jurisdiction at 5, Alexdex Corp. \textit{v. Nachon Enters.}, Inc., 641 So. 2d 858 (Fla. 1994) (No. 81,765).
whether a lien foreclosure involves title to real property. Counsel for Alexdex argued:

There is a major difference between the establishment of a lien and the foreclosure of it. Once a lien is to be foreclosed, then under the operative statutes and case law, the title to the property is dealt with directly and conclusively within the final judgment, and it is an action which should be exclusively within the province of the circuit court.

Counsel for Alexdex recognized that reversing the Third District Court of Appeal’s decision could invalidate numerous foreclosure actions which have been completed in county court, but argued that:

That result can be obviated by this Court through the application of the “de facto judge” theory to those cases which are complete, by the requirement that all pending property foreclosure cases of all types be forthwith administratively transferred to circuit court, and by the requirement that henceforth all filings be taken only in the circuit court.

Counsel for Alexdex also mentioned the fact that all actions that are in rem or quasi-in rem by definition involve title to real property, and cited cases which discuss the local action rule. Alexdex argued:

Although county courts were given equitable jurisdiction (a coercive, in personam, type of jurisdiction) they were not given in rem jurisdiction over realty. As a result, the jurisdiction statutes can be reconciled in the foreclosure context.

The courts have consistently held that a court cannot cause its own judgment to effect a title transfer unless that court has in rem jurisdiction.

162. Petitioner’s Reply Brief at 1, Alexdex Corp. v. Nachon Enters., Inc., 641 So. 2d 858 (Fla. 1994) (No. 81,765).
163. Id. Counsel for Alexdex did not seem to recognize Nachon’s argued distinction between “involve” and “affect;” Alexdex repeatedly equated the two, and substituted affect for involve, claiming that Nachon was arguing that foreclosure does not affect title, when Nachon was arguing was that it does affect title, but does not involve it. Id.
164. Id.
165. Id. at 3.
166. Petitioner’s Reply Brief at 3, Alexdex (No. 81,765) (citing Greene v. A.G.B.B. Hotels, Inc., 505 So. 2d 666, 667 (Fla. 5th Dist. Ct. App. 1987) (holding that a suit was converted from in rem to in personam once a mechanic’s lien was transferred to bond)).
Alexdex noted that section 45.031(5), which prescribes the procedures for judicial sales, "states that the certificate of title recorded in furtherance of a judicial sale - the object of a foreclosure action - transfers title without the necessity of any further proceedings or instruments . . . and directly proves that the action effects the boundaries and title to property. . . ." In its brief, Alexdex noted that the supreme court also approved a form foreclosure judgment forms:

The last, and to Petitioner's mind most convincing, is that the form foreclosure judgment approved by this Court as an appendage to the Florida Rules of Civil Procedure, and by the legislature in Chapter 45, sets forth that a particular parcel of property to which the lien had attached, described by legal description, will be sold by the Court at a date certain. That is not a judgment for payment of money. The payment may stop the sale, it may redeem the title, but the judgment orders the sale. The judgment, and its attendant certificate of title, effects a transfer of title without the intervention of the party or further court proceedings. 168

Alexdex urged the court to hold that the circuit courts have exclusive jurisdiction in foreclosure actions, and that the de facto judge theory be applied to resolve the problem of the potential invalidity of foreclosure cases decided in the interim period in county courts. 169 Although de facto judge

\[167. \text{Id. at } 4.\]

\[168. \text{Id. at } 5; \text{see also Petitioner's Main Brief at 7, Alexdex Corp. v. Nachon Enters., Inc., 641 So. 2d 858 (Fla. 1994) (No. 81,765) which provides:} \]

- In the typical lien foreclosure complaint, where the lien has not been transferred to bond, 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. Absent payment or redemption, a certificate of title is issued from the clerk of the court to a successful buyer. Common sense tells us that nothing could effect [sic] title more than a direct judicial sale of the underlying parcel.

\[\text{Id. (footnotes omitted).} \]

\[169. \text{Petitioner's Reply Brief at 5-6, Alexdex (No. 81,765) states:} \]

- This Court has, in appropriate cases, found that a judge improperly assigned, acting under color of authority and without objection could be found to be a "de facto judge" so as to validate questionable judicial acts. But for an order of temporary assignment to circuit court, these judges would have been capable of hearing the foreclosure proceedings. The clerks office is shared between the county and circuit courts.
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theory is frequently used in the criminal division of the circuit court because of the overwhelming volume of cases, its use is less common in the civil division.\textsuperscript{170} It should not be transformed from an emergency measure into a means of increasing the jurisdiction of the county court.

Alexdex further argued against distinguishing liens by individual value, with liens of $15,000 heard in the circuit court.\textsuperscript{171} It would be more efficient if one court heard all foreclosure cases involving a particular piece of land. A county court sitting in equity might hear a small lien foreclosure case in which a senior lienor intervenes. Would it be fair for a county court, which is only empowered to hear cases not exceeding $15,000, to decide the rights of all lienors to a property, when the combined amount of all liens exceeds $15,000? The answer is probably no, but the issue is illusory because such a case would likely be transferred to the circuit court.\textsuperscript{172} Even if not, the county and circuit courts use the same clerk.\textsuperscript{173} As such, a lis pendens filed with respect to an action in county court imparts notice just as much as a lis pendens filed with respect to an action in circuit court. Furthermore, if the county courts were vested with powers in equity, they should be able to balance the equities regardless of the amount in controversy. Equity is usually not related to money, and equitable relief is

\textsuperscript{Id.} (citations omitted); \textit{see also} FLA. STAT. § 26.57 (1993) (providing for temporary designation of county court judges to preside over circuit court cases).

\textsuperscript{170} Interview with Edward Iturralde, Assistant State Attorney, Office of The State Attorney, Eleventh Judicial Circuit of Florida, in Miami, FL (June 14, 1994).

\textsuperscript{171} Petitioner’s Main Brief at 9-10, \textit{Alexdex} (No. 81,765). Alexdex, the petitioner, argued that for the sake of consistency, one court should hear all liens filed against one parcel:

[It does not seem likely that the intent of permitting equitable jurisdiction was to place into the hands of county courts the ability to sell unlimited values of property all because of small liens. Until our two tier system of trial courts is totally abrogated, demarcation must be based upon the total value of the issues being handled, not just the individual components of the lawsuits in question. \textit{Id.}; \textit{see also} Petitioner’s Amended Brief on Jurisdiction at 6, Alexdex Corp. v. Nachon Enters., Inc., 641 So. 2d 858 (Fla. 1994) (No. 81,765): “Although to some degree the lines between county and circuit courts are blurring, they still remain district [sic] 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.” \textit{Id.} Alexdex also argued that by allowing foreclosure in both courts, foreclosure sales of the same property could be conducted in two courts. \textit{Id.} at 6-7.

\textsuperscript{172} Where the holder of a small lien seeks to foreclose, the larger lienors usually intervene, foreclosing their own liens, and moving to transfer the case to the circuit court because the amount in controversy is over $15,000.

\textsuperscript{173} \textit{See} FLA. STAT. § 34.031 (1993) (providing that the “clerk of the circuit court shall be the clerk of the county court unless otherwise provided by law”).

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granted in cases involving land, not because the parties may lose money, but because they may lose land, which is unique.  

B. The Amicus Curiae Briefs—Bar and Real Estate Industry Proposals

Three briefs were filed by amicus curiae, which included The Real Property, Probate and Trust Law Section of the Florida Bar, Attorney’s Title Insurance Fund, and the Florida Land Title Association among several others. The Real Property, Probate and Trust Law Section of The Florida Bar argued that the Third District Court of Appeal’s decision “has unequivocally cast doubt on the jurisdiction of courts to hear lien foreclosure cases and adversely impacts the stability of land titles coming through foreclosure,” and stressed that section 26.012(2)(g) restricts the application of section 34.01(4). The Bar argued:

[L]egislative intent, which is the primary factor in construing statutes, must be resolved from the language of the statute. Simply stated, a statute is to be construed and applied in the manner enacted. Further, all statutes are presumed to be consistent with each other and enacted with knowledge of existing statutes.

The use of the words “shall” and “exclusive” in section 26.012(2)(g) and “title and boundaries to real property,” if presumed to be consistent with section 34.01(4), could only support this interpretation, according to the Bar. The Bar argued that Spradley was inapplicable because it was an action for declaratory judgment, which does not involve title or boundaries to real property, whereas foreclosures do. Also noted was the inconsistency of section 34.01(4) with section 702.07, concerning the “[p]owers of courts and judges to set aside foreclosure decrees.” Section 702.07 expressly provides that only the circuit courts have the power to set aside decrees.

175. See supra note 137.
176. Amended Brief of Amicus Curiae (Florida Bar) at 1, Alexdex (No. 81,765).
177. Id. at 2.
178. Id. at 2-3; see also 49 Fla. Jur. 2D Statutes § 180 (1992).
179. Amended Brief of Amicus Curiae (Florida Bar) at 3, Alexdex (No. 81,765).
180. Id. at 9.
181. Id. at 11.
The Bar then went on to explain the definitions of "exclusive," and "title and boundaries of real property," referring also to the Marketable Record Title Act. The Bar argued that foreclosure involved title to real property because the owners are necessary and indispensable parties to the action, and it also mentioned possible problems in valuating lien foreclosures for jurisdictional purposes.

A second brief, filed on behalf of several title insurers and one lender, argued that the circuit court should have concurrent jurisdiction with the county courts over foreclosures under $15,000, to preserve the validity of foreclosures completed since 1990. While the title insurers agreed with the Bar's statement that the Third District Court of Appeal's decisions in Nachon and Brooks had cast doubt on titles coming through foreclosures not in excess of $15,000, the insurers disagreed that the circuit courts had exclusive jurisdiction in equity, section 26.012(2)(c) notwithstanding:

The Amici do not disagree with the Florida Bar that a rule of exclusive jurisdiction in the circuit courts prospectively has tremendous appeal. Certainly, such a result would avoid amount in controversy questions, and preserve in the circuit courts their traditional role of having exclusive jurisdiction over lien foreclosures, regardless of the amount in controversy. However, the Florida Bar has studiously ignored what has happened, and is happening every day: the filing, prosecution, and termination of lien foreclosures in the county courts throughout the State.

183. Exclusive means: "Appertaining to the subject alone, not including, admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or participation; vested in one person alone. Apart from all others, without the admission of others to participation." BLACK'S LAW DICTIONARY 564 (6th ed. 1990). The definition of "exclusive" reinforces and substantiates the conclusion that actions involving the title and boundaries of real property lie within the sole jurisdiction of the Circuit Courts.

184. Amended Brief of Amicus Curiae (Florida Bar) at 13, Alexdex (No. 81,765).

185. Id. at 17.

186. These include Stewart Title Guaranty Corp., Attorney's Title Insurance Fund, First American Title Insurance Co., Commonwealth Land Title Insurance Corp., The Florida Land Title Ass'n, Old Republic National Title Insurance Co., and Avatar Properties, Inc.

187. Amicus Curiae Brief (Stewart) at 7-8, Alexdex (No 81,765). The amici contended that interpreting the statutes and constitution to provide the circuit courts with exclusive jurisdiction over lien foreclosures would throw the real estate business into hopeless confusion or uncertainty, and must be rejected in favor of concurrent jurisdiction between the circuit and county courts. Id. at 7.

188. Id. at 8-9.

189. Id. at 8.
The title insurers also disagreed with the Florida Bar that the amount in controversy was a problem, stating that jurisdiction is determined by the amount claimed and put into controversy in good faith. They argued that the only acceptable interpretation would be to consider the circuit and county courts as having concurrent jurisdiction, thereby preserving the validity of past foreclosure judgments:

The circuit and county courts of this State have concurrent equitable jurisdiction to hear and determine lien foreclosures within the jurisdictional limits of the county courts, because any other interpretation runs contrary to established principles of constitutional and statutory construction, is inconsistent with case law from this Court favoring concurrent jurisdiction, and would be productive of much litigation and insecurity which a reasonable construction of the Constitution and statutes can avoid.

In this manner, the plaintiff may select his or her forum in those actions falling within the jurisdictional limits of the county courts. The

190. Id. at 8 n.2 (citing Williams v. Gund, 334 So. 2d 314 (Fla. 2d Dist. Ct. App. 1976) (arguing that "the amount claimed to be due under the lien sought to be foreclosed would control")).

191. Amicus Curiae Brief (Stewart) at 2, Alexdex (No. 81,765); see also id. at 16 (citing to 49 FLA. JUR. 2D Statutes § 183 (1984) ("[A] court should be astute in avoiding a construction which may be productive of much litigation and insecurity, or which would throw the meaning or administration of the law, or the forms of business, into hopeless confusion or uncertainty."). The amici continued:

First and foremost, a reasonable interpretation of the Constitution and statutes involved compels the conclusion that the Legislature intended for the circuit and county courts to have concurrent jurisdiction of foreclosures where the amount in controversy is less than fifteen thousand (15,000.00) dollars. This is so, because § 26.012 Fla. Stat. (1991) vests exclusive jurisdiction in the circuit courts to hear all cases in equity, and actions involving the title and boundaries of real property. In the same vein, the Legislature has seen fit in § 34.01(4) (1990) to grant the judges of the county courts permissive jurisdiction to hear "all matters in equity." Since a clear conflict exists, the latest expression of the legislative will should govern. Moreover, since the Legislature used the word "may" in section 34.01(4) to describe the scope of the county courts' equitable jurisdiction, and as concurrent jurisdiction is the norm rather than the exception, the jurisdiction of the courts involved should be concurrent.

Id. at 2-3. The amici also cited to State v. Butt, 5 So. 597 (Fla. 1889), in support of the proposition that the legislature can grant one court additional jurisdiction, but in doing so, cannot diminish the constitutional jurisdiction of another court. Such a grant of additional jurisdiction must be concurrent. Id. at 15.

192. Id. at 15.
insurers, apparently mindful of their duty to defend the titles they may have insured which could be invalidated by a decision either way, struggled to find the only acceptable solution for their interests:

If section 34.01 is viewed as a whole, the Legislature's choice to restrict the equity jurisdiction of the county courts by reference to the "laws of Florida" appears not to be directed towards § 26.012(2)(g), Fla. Stat. (1991), which gives circuit courts [exclusive] jurisdiction over lawsuits involving both title and boundary disputes. Rather, the Legislature must have intended to refer to other laws of general application, which vest exclusive jurisdiction in the circuit courts over certain types of claims.\(^1\)

The amici disagreed that foreclosures necessarily involve title and boundaries of real property, and argued that it is not necessary to resort to subsection 2(g) of section 26.012 of the Florida Statutes to resolve the dispute: \(^2\)

Florida is a lien theory state. Section 697.02, Fla. Stat. (1927) provides that a "mortgage shall be held to be a specific lien on the property therein described, and not a conveyance of the legal title or of the right of possession."

A suit to foreclose a mortgage is most accurately viewed as a quasi in rem proceeding with its principal object being to secure repayment of the underlying debt, and its incidental object being to convert the lien interest by foreclosure and sale of the security for that debt post-judgment. . . . Certainly, the vast majority of foreclosures do not

\(^{193}\) Amicus Curiae Brief (Stewart) at 3-4, Alexdex (No. 81,765) (failing to note that one of these "certain types of claims" is expressly stated to be "cases in equity").

\(^{194}\) Id. at 18-20. The amici contended:

First, § 26.012(2)(g) does not appear to be a "law of the State of Florida" within the contemplation of the Legislature. . . . [I]n setting limitations on the county courts' jurisdiction, the Legislature has historically either used the language "except those within the exclusive jurisdiction of the circuit court", or made specific reference to 26.012. \(\text{See, e.g., section 34.01(c) 1.; }\) § 34.01(2). It would have been a simple matter for the Legislature to employ the same conventions were it intending to limit the jurisdiction of the county courts in equity actions by reference to § 26.012(g). It chose not to do so.

\(\text{Id. at 19.}\) "[A] mortgagee does not have an estate or interest in mortgaged lands, by virtue of his mortgage, but is merely the owner of a chose in action creating a lien on the property." \(\text{Id. at 20 (citing Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954)).}\)
involves [both] title and boundaries of real property, giving full effect to the copulative "and" expressly provided by the statute.\textsuperscript{195}

Showing apparent uncertainty as to the soundness of their position, the amici alternately argued that if the court decided that the circuit courts have exclusive jurisdiction in equity, the court "must craft appropriate protections to safeguard the validity of judgments arising out of foreclosures which have been prosecuted in the county courts since the effective date of section 34.01(4) Fla. Stat. (1990)."\textsuperscript{196} The insurers urged:

Pursuant to Art. V, § 2(b), Fla. Const. (1972), the Chief Judge of this Court has the power to assign any judge who is qualified to so act, to temporary duty as an acting circuit court judge. Rule 2.050(a), Fla. R. Jud. Admin. specifically preserves this power: a power which this Court has previously recognized. This Court should accordingly issue an order signed by the Chief Justice of this Court assigning those county court judges who have presided over lien foreclosures to the temporary duty as acting circuit court judges, \textit{nunc pro tunc} to the effective date of § 34.01(4) Fla. Stat. (1990), in those cases which have already gone to judgment.\textsuperscript{197}

Still another amici brief, filed by ARDA, argued that the proper interpretation was to grant the county and circuit courts concurrent jurisdiction in lien foreclosures not exceeding $15,000.\textsuperscript{198} While agreeing with Nachon's reasoning that foreclosure is not an action involving title,\textsuperscript{199} ARDA argued alternatively that a final judgment entered by a court later found to have conflicting subject matter jurisdiction would not be void:

However, the situation presented by this case is not that the statutes fail to provide jurisdiction, but instead the statutes provide conflicting

\textsuperscript{195} Id. at 20-21 (citations omitted).
\textsuperscript{196} Amicus Curiae Brief (Stewart) at 4, \textit{Alexdex} (No. 81,765).
\textsuperscript{197} Id. at 4-5; see also FLA. CONST. art. V, § 2(b):
The chief justice of the supreme court shall be chosen by a majority of the members of the court. He shall be the chief administrative officer of the judicial system. He shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in his respective circuit.
\textit{Id.}
\textsuperscript{198} Amicus Curiae Brief (ARDA) at 3, \textit{Alexdex} (No. 81,765).
\textsuperscript{199} Id. at 10.
jurisdiction. This being the case, assuming arguendo that jurisdiction is found to lie with either court exclusively, decisions by the other court could be perceived as an “erroneous exercise of subject matter jurisdiction”, rather than void, as not having jurisdiction. . . .

Judgments based on mere “erroneous exercise of jurisdiction” are not void, but are subject to res judicata and are reversible on appeal.200

ARDA also argued that for subject matter jurisdictional purposes in foreclosure actions, the amount in controversy should be the principal and accrued interest amount of the foreclosing mortgage or claim of lien.201

C. Legislative Proposals

The legislature proposed various solutions in the Regular Session to resolve the jurisdictional conflict.202 Senate Bill 218 would have amended section 34.01(4) to include the wording “except foreclosures,” thereby removing foreclosure actions from the jurisdiction of the county courts.203 The bill would have preserved the validity of all foreclosure judgments entered in county courts in the interim period since the 1990 changes to section 34.01(4).204 Another bill, Senate Bill 78, proposed basically the

200. Id. at 13. ARDA elaborated:

The United States District Court has distinguished a void judgment from a judgment based on an erroneous exercise of jurisdiction. Hobbs v. United States Office of Personnel Management, 485 F. Supp. 456 (M.D. Fla. 1980). . . . In Hobbs, the court held: A void judgment is one which from the beginning was a complete nullity and without any legal effect. . . . However a void judgment must be distinguished from a judgment based on an erroneous exercise of jurisdiction. A court has the power to determine the extent of its own jurisdiction and only when there is a clear usurpation of power will the decision be considered void. . . . A judgment which is not void, even though it may be based on an erroneous exercise of jurisdiction, is subject to res judicata and can be reviewed only by direct appeal.

Id. at 13-14 (citing Hobbs, 485 F. Supp. at 458).

201. Id. at 15.

202. The legislature also proposed changes in 1992 and 1993, but the bills were unsuccessful and died in committee. The bill proposed in 1992 was S.B. 1480, which would have amended section 26.012(2)(c) to remove the “exclusive” provision. This was unsuccessful because it would have required a constitutional amendment. In 1993, H.B. 1557 would have given the county and circuit courts concurrent jurisdiction in equity, and S.B. 1564 would have amended the constitution to abolish the county courts.


204. Id.
same changes, but the wording was slightly different, adding "except foreclosures on equitable mortgages" to section 34.01(4). Still another Senate proposal, Joint Resolution 422, would have, by constitutional amendment, abolished the county courts and transferred jurisdiction and judges of the county courts to the circuit courts. The House of Representatives proposed House Bill 2547, which would have amended section 34.01(4) to include the phrase "except foreclosures on real property" to deny county courts jurisdiction and prevent disputes over whether foreclosures affect or involve title and/or boundaries of real property.

All of these legislative proposals died in committee, due to the passage of chapter 94-138, an act creating the Article Five Task Force, which will conduct a complete review of the judicial branch. One of the possibilities the task force will study is "whether a single-tier trial court would better meet the needs of the state." The Act became law on May 11, 1994, and the task force is expected to submit a report with recommendations to the legislature by December 1, 1994.

The creation of the Article Five Task Force seems to have stifled other legislative action regarding the jurisdictional conflict. The legislature seemed to be waiting for the court to decide Nachon, but the court, with the recent pending changes in membership due to the departures of Justices Barkett and McDonald, had not been issuing a large number of opinions.

D. The Florida Supreme Court's Decision

In a short, per curiam decision, the court sided with the amici title insurers and held "that circuit courts, and county courts within their statutorily set monetary limit, have concurrent jurisdiction in matters of equity." In doing so, the effect on the litigants was that Nachon's
Valcarcel county court lien foreclosure action, involving approximately $4000, was finally validated. The decision should also have the effect of reversing the dismissal in Blackton, which had also been appealed. More importantly, however, the decision preserved the validity of prior small foreclosures brought in county court. The court was apparently concerned about preserving the stability of land titles, although it makes no mention of this concern in its opinion. Title insurers undoubtedly appreciate the decision, regardless of whether the benefit was intentional or incidental. However, the court’s decision may not have completely resolved all of the issues.

Although the holding states that equity jurisdiction is concurrent between county and circuit courts in cases involving $15,000 or less, the court stated that “in construction lien foreclosures, the central focus is on the actual debt owed and not the underlying securing property. Therefore, the monetary restrictions in section 34.01(c)1-4. shall apply to the amount of the lien without consideration to the value of the securing property.” In so holding, the court has put a monetary amount classification on equitable relief, which seems to be antithetical to equity. Prior to the statutory changes in 1990, foreclosures, actions in equity, were brought exclusively in circuit courts. The amount in controversy was not a relevant factor. The property owner’s right to redeem his interest, which most likely is worth much more than the county court limit of $15,000, is what is being foreclosed. The court’s approach now makes the amount in controversy relevant in determining equity jurisdiction, at least with respect to construction lien foreclosures. It is unclear whether the court intended to limit the application of this controversy valuation rule to construction lien foreclosures; the relevant portion of the opinion refers only to construction lien foreclosures and not to foreclosures in general. This uncertainty may become a source of future litigation. Regardless of the scope of application of the court’s valuation rule, it would seem more logical to determine the jurisdictional amount in controversy by evaluating the property owner’s equity of redemption instead of the value of the obligation which the plaintiff seeks to collect; unlike an action at law to collect on a debt, a foreclosure action puts title to real property in controversy. This approach is consistent with the court’s additional ruling in Nachon that lien foreclosures (not limiting its reference to construction liens) do involve title and boundaries to real property, reversing that portion of the Third District

213. Id. at 862.
214. Id.
The court’s approach to the valuation of the amount in controversy creates additional uncertainty in that it is not clear now whether the county courts can hear other equitable actions, such as equitable defenses and counterclaims, without regard to monetary value. Prior to the decision, it was understood that county courts had jurisdiction to hear equitable defenses and counterclaims which arose within actions at law within the county court’s monetary limits. Now that construction lien foreclosures are valued at the amount of debt owed, it remains to be interpreted whether other equitable actions such as specific performance, rescission, or even declaratory judgments must be similarly valued.

Additionally, the court’s assertion that foreclosures do involve title and boundaries of real property creates uncertainty as to whether a quiet title action can be heard in county court. Here again, the court’s valuation approach will likely cause further litigation; it is not certain whether the court’s statement that the value of the property is not a factor in determining whether the action falls within the county court’s monetary restriction applies to quiet title actions. If so, then how would a quiet title action be valued for jurisdiction purposes? Section 34.01(2)(g) states that actions involving title and boundaries of real property, which is understood to include quiet title actions, are exclusively within the jurisdiction of the circuit courts; the court’s decision only adds to the contradiction.

It is most likely apparent to the practitioner who reads sections 34.01 and 26.012 that the court, in reaching its decision, performed more than just plastic surgery on the statutes; implant surgery is a more accurate analogy to describe the court’s interpretation. The court analyzed the two statutory sections, stating that it found a conflict only when the sections are taken together, but that separately, the two sections are “clear, precise, and their meanings understandable.” The court then concluded that section 34.01, which grants exclusive equity jurisdiction to the circuit courts, could not logically be interpreted as restricting the more recent legislative action in section 26.012. The court stated: “A contrary holding would ignore the latest legislative expression on the subject and run counter to our principle . . . that a statute should not be interpreted in a manner that would deem legislative action useless.” The court found no constitutional infirmity in section 26.012 and did not ask the legislature to modify the jurisdictional statutes to make their meaning more clear and unequivocal. The court

215. Id. at 860-61.
216. Id. at 861.
217. Alexdex, 641 So. 2d at 862.
seemed mindful of the strict separation of powers and the legislature’s action in creating the Article Five Task Force; the decision is probably the most neutral solution, in light of the anticipated recommendations expected from the task force by the end of the year.

E. Final Analysis

The court’s interpretation seems to go beyond what the legislature intended; if the legislature had intended to grant the county courts concurrent jurisdiction in equity, it could have easily done so in simple and unequivocal terms. Such action would have been well publicized as a notable change in Florida law. This was not the case, however. The author suggests that a close reading of the two statutes seems to indicate the true intent of the legislature, as expressed in the Staff Report of Chapter 90-269: Namely, that circuit courts should still have exclusive jurisdiction in cases in equity, while the county courts may hear matters involving equity within a case, such as defenses or counterclaims, and do not have to transfer cases clearly within county court jurisdiction over to the circuit courts just because an equitable matter arises. A lien foreclosure is not an equitable matter within a case; it is purely and completely an equitable case. There lies the distinction. This interpretation leads to the conclusion that there is no conflict between the statutes, although there may, as the staff analysis report states, be a conflict with the constitution. Additionally, this interpretation would have had the detrimental effect feared by the amici in Nachon, which could have invalidated foreclosure actions brought in county courts. However, this problem could have been resolved in several ways. The court could have expressly validated all foreclosure judgments entered in the county courts since the 1990 changes to section 34.01(4) by making its decision effective prospectively. Alternately, the court could have applied the de facto judge theory as urged by counsel for Alexdex; after all, the qualifications required to become a county court judge are the same as those for becoming a circuit court judge. Even if the court’s decision

218. Staff Analysis, supra note 58, at 4.
219. Although this opinion is in theory not available when the issue involved is subject matter jurisdiction, if the court holds that the county courts do not have jurisdiction in equity to hear foreclosures, then prior judgments are void. Therefore, the court should find a way of holding both that the county courts did have jurisdiction in the prior foreclosures and then rule either way on whether each jurisdiction should continue.
220. See Fla. STAT. § 34.021(1) (1993) (except for judges in counties with populations under 40,000, all county judges must have been member of the bar in good standing for five years); accord Fla. CONST. art. V, § 8 (which prescribes the same five year requirement for
is seen as the best possible solution, the court should probably have admitted
the inconsistency in the statutes and requested that the legislature take steps
to correct their wording. That the court chose not to do so is an indication
that it expects these matters to be resolved once and for all by the task
force.\footnote{See FLA. CONST. art. V, § 20(c)(3).} It will be interesting to see what the Article Five Task Force
recommends.

Furthermore, looking beyond the immediate issue at hand, it may be
time to begin considering the possibility of merging the circuit and county
courts into a single tier trial level court. The judges in both courts must
meet the same qualifications,\footnote{See supra note 220.} and both courts use the same clerk, the
clerk of the county \textit{and} circuit courts.\footnote{See FLA. STAT. § 34.031 (1993) (providing that “[t]he clerk of the circuit court
shall be the clerk of the county court unless otherwise provided by law”).} County court judges can and
often do act as temporary (and not so temporary) circuit court judges.\footnote{Interview with Edward Iturralde, Assistant State Attorney, Office of the State
Attorney, Eleventh Judicial Circuit of Florida, in Miami, FL (June 14, 1994).} Both courts are divided into various divisions according to areas of law and
types of cases,\footnote{See FLA. CONST. art. V, § 7.} and both courts usually have several branches throughout
the county or counties comprising a circuit.\footnote{Id. § 20(c)(9).} It does not seem that much
disruption would result, except for possible disruptions resulting from the
necessary changes in building names and letterheads. With the recent
increases in monetary limits in the county court, the oft stated rationale that
the county courts are not equipped to handle complex cases seems to be
weakening. The constitution would have to be amended, but it is to be
revised in 1998.\footnote{See Jim Smith, \textit{So You Want To Amend The Florida Constitution? A Guide to
Initiative Petitions}, 18 NOVA L. REV. 1509, 1510 (1994).} An amended article V could have one trial level court,
the circuit court, with several divisions according to complexity of cases.
This would eliminate the problem of a case being dismissed for lack of
subject matter jurisdiction; the case could be transferred to the appropriate
division if necessary.

\section*{V. CONCLUSION}

This author believes that there may be no actual conflict between the
circuit and county court jurisdictional statutes, so that the circuit courts
should still have exclusive original jurisdiction over cases in equity, including foreclosures of all amounts. The court seems to have been influenced by the title insurers' reality based arguments concerning the stability of land titles, and a desire to defer to the legislature in anticipation of the Article Five Task Force’s pending report. The wording used by the legislature in its 1990 change of section 34.01(4) has caused so much confusion that it may be impracticable to return to the past allocation of equitable jurisdiction. This legislative malpractice may have the effect of precipitating the merger of the county and circuit courts. Maybe the time has come.

Manuel R. Valcarcel