

IN THE FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

THE HONORABLE RONNIE FUSSELL,  
as Clerk of Court of Duval  
County, Florida,

Appellant,

vs.

Case No. 1D20-2068

Lower Tribunal Case No.  
16-2018-CA-6589

PRITCHETT TRUCKING, INC.,  
a Florida corporation;  
K.T. CARTER CONTRACTING, INC.,  
a Florida corporation;  
T.D. FARRELL CONSTRUCTION, INC.,  
a foreign corporation; and  
TRAVELERS CASUALTY & SURETY  
COMPANY OF AMERICA,  
a foreign corporation,

Appellees.

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**NACM SERVICES CORP. D/B/A ZOOMLIEN'S**  
**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

COMES NOW, NACM SERVICES CORP. d/b/a ZOOMLIEN, a Florida corporation (hereinafter "ZOOMLIEN"), by and through undersigned counsel, and moves the Court pursuant to Rule 9.370(a), Florida Rules of Appellate Procedure, for leave to file a brief as amicus curiae.

**A. ZOOMLIEN'S INTEREST IN THE PROCEEDINGS**

1. ZOOMLIEN is a Florida affiliate of the National Association of Credit Management with more than Nine hundred (900) credit managers/members, many of whom are the "financial arms" of construction contractors, subcontractors and material suppliers (hereinafter "lienors") operating throughout Florida's sixty-seven (67) counties. These credit managers/members are specifically tasked with, *inter alia*, insuring their lienors' compliance with Florida's Construction Lien Law in order to protect their lienors' livelihoods.

2. The Supreme Court of Florida has stated, in the leading case of Florida Steel Corp. v. Adaptable Developments, Inc., 503 So.2d 1232 (Fla. 1986), that a primary purpose of Florida's Construction Lien Law is to protect lienors who require more than traditional contract remedies to recoup their extensions of credit to property owners. The Court there stated:

Adaptable argues that the purpose of chapter 713 is to protect owners by placing limits on their liability to lienors. This is indeed one of the purposes of the Mechanics' Lien Act [now the Construction Lien Law], but the legislature had another purpose in enacting mechanics' lien legislation, i.e., preventing unjust enrichment of

owners at the expense of lienors. Florida's Mechanics' Lien Act is an attempt to reconcile these conflicting purposes. Underlying the concept of a mechanic's lien is the premise that the construction industry needs more protection for extensions of credit than contract remedies provide. This is necessary because, as a rule, those in the construction industry require large amounts of credit for long periods of time and often commit all of their capital to ongoing construction projects.

Florida Steel Corp. v. Adaptable Developments, Inc., supra,  
503 So.2d at 1234.

3. As may seem obvious, the ability of lienors to effect the timely recordation of construction liens has been adversely affected by the onset of the COVID-19 pandemic. To this end, physical access to clerk of courts' offices for the purpose of submitting construction liens for timely recordation have been limited or denied altogether in an effort to protect the health and safety of clerk of court employees. As such, lienors wishing to submit construction liens for timely recordation in many counties are relegated to submitting said construction liens by mail or electronic filing<sup>1</sup>.

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<sup>1</sup> Even with electronic filing, delays are occurring.

4. Because the timely recordation of construction liens is a statutory condition precedent to the foreclosure of construction liens for nonpayment for services rendered or construction materials supplied, Section 713.08(5), Florida Statutes, ZOOMLIEN has a substantial interest in insuring that this Court properly construes the Florida Statutes at issue in this appeal, which specifically govern the situation presented, *to wit*, a lienor's timely submission (by mail) of a construction lien for recordation, and a clerk of court's subsequent delay in effecting the recordation of said construction lien, resulting in the lienor losing its "special protection for extensions of credit", i.e., its ability to impress a construction lien upon the property owner's property for nonpayment for services rendered or construction materials supplied.

5. Because the issues presented in this appeal involve matters of statewide concern to the hundreds of thousands of construction workers throughout the State of Florida, ZOOMLIEN submits that it has a substantial interest in this proceeding.

**B. THE PARTICULAR ISSUES TO BE ADDRESSED**

6. ZOOMLIEN will address the following issues:

(a) the statutory authority, policy considerations and historical underpinnings behind the Construction Lien Law's timely recordation requirement for construction liens as set forth in Section 713.08(5), Florida Statutes;

(b) the statutory authority, policy considerations and historical underpinnings behind the Florida Statute governing a Clerk of Court's obligation to effect the timely recordation of construction liens as set forth in Section 28.222(3), Florida Statutes;

(c) the statutory authority, policy considerations and historical underpinnings behind the Florida Statute compelling a Clerk of Court or in some counties the county comptroller to "record . . . anew" an instrument "imperfectly or erroneously recorded" as set forth in Section 695.12, Florida Statutes; and

(d) the seminal importance of construing the above-referenced Florida Statutes as written by the legislature even when said construction appears unfeasible or impractical.

**C. HOW ZOOMLIEN CAN ASSIST THE COURT**

7. As noted above, this appeal will require this Court to address the existence and scope of remedies available to a lienor whose enforceable construction lien is placed in jeopardy through no fault of its own due to a clerk of court's excessive delay in effecting the recordation of said construction lien. To this end, ZOOMLIEN has a great deal of experience in litigating this precise issue in circuit courts throughout the State of Florida, and has achieved mutually favorable outcomes to said controversies.

**D. PARTIES CONSENTING TO ZOOMLIEN'S PARTICIPATION**

**CERTIFICATE OF CONFERENCE WITH COUNSEL  
FOR THE HONORABLE RONNIE FUSSELL, AS  
CLERK OF COURT OF DUVAL COUNTY, FLORIDA**

8. The undersigned hereby certifies that he obtained consent for the filing of an amicus curiae brief from counsel for Appellant THE HONORABLE RONNIE FUSSELL, AS CLERK OF COURT OF DUVAL COUNTY, FLORIDA via telephone conference with Attorney Craig D. Feiser at 9:05 a.m. on October 23, 2020, as the undersigned was informed that counsel for Appellant consents to the filing by ZOOMLIEN of an amicus curiae brief.

**CERTIFICATE OF CONFERENCE WITH  
COUNSEL FOR PRITCHETT TRUCKING, INC.**

9. The undersigned hereby certifies that he obtained consent for the filing of an amicus curiae brief from counsel for Appellee PRITCHETT TRUCKING, INC. via telephone conference with Attorney Mark C. Bryan at 2:35 p.m. on October 22, 2020, as the undersigned was informed that counsel for PRITCHETT TRUCKING, INC. consents to the filing by ZOOMLIEN of an amicus curiae brief.

**CERTIFICATE OF CONFERENCE WITH  
COUNSEL FOR K.T. CARTER CONTRACTING, INC.**

10. The undersigned hereby certifies that he obtained consent for the filing of an amicus curiae brief from counsel for Appellee K.T. CARTER CONTRACTING, INC. via telephone conference with Attorney Don Neisen at 11:10 a.m. on October 26, 2020, as the undersigned was informed that counsel for K.T. CARTER CONTRACTING, INC. consents to the filing by ZOOMLIEN of an amicus curiae brief.

**CERTIFICATE OF CONFERENCE WITH COUNSEL**  
**FOR T.D. FARRELL CONSTRUCTION, INC. AND**  
**TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA**

11. The undersigned hereby certifies that he obtained consent for the filing of an amicus curiae brief from counsel for Appellees T.D. FARRELL CONSTRUCTION, INC. and TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA via telephone conference with Attorney J.D. Humphries, III at 3:15 p.m. on October 22, 2020.

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that this motion has been prepared using Courier New 12 in compliance with Florida Rules of Appellate Procedure 9.210(a)(2).



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26th day of October, 2020, I electronically filed the foregoing with the Clerk of the Courts by using the State of Florida ePortal system which will send a notice of electronic filing together with a copy of this filing to the following:

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