FRANK J. TRYTEK, ET AL. v. GALE INDUSTRIES, INC., ETC.
CASE NO. SC07-1641

FLORIDA SUPREME COURT
TUESDAY, SEPTEMBER 9, 2008

>> A FEE DRIVEN LITIGATION
AND IF THE JUDGE HAD THE
ABILITY TO NOT AWARD FEES TO
EITHER PARTY, I'M SURE THE
JUDGE WOULD HAVE.
>> SO, SO WHAT YOU ARE TELLING
ME, IS THAT YOU END UP WITH AN
ASSESSMENT OF 50 -- 53 OR
55,000, IN FEES, BECAUSE THE
CASE DIDN'T GET SETTLED BECAUSE
YOU COULDN'T HAVE -- ARRIVE AT
AN AGREEMENT ABOUT THE FEES.
>> IS THAT CORRECT.
>> LET ME FOLLOW-UP ON THAT,
BECAUSE --
NEITHER OF YOU RAISED THE ISSUE
UNDER 713.21 -- 29, THERE CAN
BE A DECISION NOBODY IS THE
PREVAILING PARTY.
DO YOU CONTEND AND JUDGE --
THIS JUDGE SEEMED TO THINK
THERE HAS TO BE A PREVAILING
PARTY UNDER 713.29?
>> I BELIEVE THAT IS
CORRECT.
YOUR HONOR, THE STATUTE ITSELF
SAYS THAT THERE SHALL BE AN
AWARD OF FEES AND THERE HAS
BEEN -- THERE WAS A -- ONE OF
THE APPELLATE DECISIONS CITED
IN BOTH PARTIES' BRIEFS
INVOLVED A CASE WHERE THE TRIAL
JUDGE TRIED TO DO JUST THAT,
AND WAS REVERSED AND WAS FOUND
TO HAVE ABUSED HIS --
>> DIDN'T THE JUDGE QUESTION
WHETHER THAT COULD BE DONE,
BUT, JUST WAS NOT BEFORE THE
COURT?
>> WELL, YES.
>> OKAY.
.
NOW WHAT MY QUESTION REALLY IS,
SEEMS TO ME, THAT -- YOU

STIPULATED, BOTH STIPULATED TO $55,000, OF -- OR ATTORNEYS FEES.
>> THAT'S CORRECT.
>> AND WE DON'T HAVE THE REASONABLENESS.
BUT IS YOUR CONTENTION, BECAUSE YOU ARE HERE NOW, SAYING THAT THE 5th DISTRICT, THE EFFECT OF THE 5th DISTRICT'S OPINION WOULD BE THAT THE CONTRACTOR WOULD GET THE -- $65,000 IN ATTORNEYS FEES?
>> WELL, THE CONTRACTOR WOULD GET WHATEVER THEIR COUNSEL HAD CHARGED THE CONTRACTOR FOR THE -- LIENOR FOR THE COURSE OF THE LITIGATION.
>> DID ANYONE LOOK AT THIS ISSUE AND LET'S JUST ASSUME WE AGREE TO THE -- I MIGHT AGREE THAT THE HOMEOWNERS -- SINCE YOU DID NOT PREVAIL ON THE LIEN CLAIM BECAUSE THERE WAS A JUDGMENT IN FAVOR OF THE CONTRACTOR.
FOR $1500 BUT THAT BECAUSE OF ALL OF OUR CASE LAW, IT WAS -- WOULD SEEM TO ME THIS ONLY FEES THEY WOULD BE ENTITLED TO, IF THEY DIDN'T PREVAIL ON THE SIGNIFICANT ISSUES AT TRIAL, WOULD HAVE BEEN ANYTHING TO ESTABLISH THEIR LIEN, WHICH IN THIS CASE WOULD BE VIRTUALLY NOTHING.
WAS THAT ARGUMENT EVER MADE?
IN OTHER WORDS, I DON'T -- I DON'T SEE WHY IT HAS TO BE AN ALL OR NOTHING SITUATION BECAUSE AN ABSURD ALTERNATIVE RESULT WOULD BE FOR THE CONTRACTOR TO GET THEIR FEES FOR LITIGATING UNSUCCESSFULLY LITIGATING A COUNTER CLAIM?
I AGREE WITH THAT AND I THINK THAT IS PART OF THE ARGUMENT WE ARE RAISING IS THIS TRIAL JUDGE SHOULD HAVE THE FLEXIBILITY TO DO EQUITY IN THIS CASE AND CERTAINLY, EQUITY WOULD NOT BE SERVED BY HAVING A

JUDGMENT ENTERED IN FAVOR OF A CONTRACTOR WHO NEGLIGENTLY PROVIDED SERVICES.
>> WHY WOULDN'T EQUITY BE TO SAY THERE HAS TO BE A RULE AND THE RULE IS NONE OF THE OTHER CASES INVOLVE A SITUATION WHERE THE HOMEOWNER DID NOT -- IN OTHER WORDS IF YOU HAD GOTTEN YOUR 18,000 YOU WOULD BE GETTING FEES AS I CAN SEE IT UNDER THESE CASES.
BUT YOU DIDN'T FEED OUT THE AMOUNT OF THE LIEN AND THEREFORE THERE WAS A JUDGMENT IN FAVOR OF THE CONTRACTOR.
ON THE OTHER HAND, BECAUSE THAT JUDGMENT WAS -- LIEN WAS STIPULATED TO, THERE REALLY SHOULD BE NO ATTORNEYS FEES, YOU WOULDN'T GET UNDER MY THEORY, YOU WOULDN'T GET ANY BECAUSE YOU ARE NOT -- YOURS IS A CONTRACTUAL COUNTERCLAIM AND, YOU KNOW, AGAIN SOMEONE ELSE MAY LOOK AT IT DIFFERENTLY.
YOU COULDN'T HAVE GOTTEN IT IF YOU BROUGHT YOUR CASE SEPARATELY FROM THE LIEN, THERE WOULD BE NO ATTORNEYS KNEES AND THEY DENT GET IT BECAUSE THEY DIDN'T PREVAIL ON ANYTHING AT TRIAL THEY ONLY COULD HAVE GOTTEN IT IF THEY LITIGATED THE LIEN CASE AND YOU OFFERED $700, YOU KNOW, EARLY ON, TO HAVE THE CASE GO AWAY.
>> THAT IS CORRECT AND I THINK WOULD BE AN EQUITABLE WAY TO RESOLVE THE MATTER.
UNFORTUNATELY THE WAY THE CASES READ NOW, THEY SAY THAT IF THE LIENOR IS SUCCESSFUL IN EVEN GETTING A JUDGMENT OF 1 PENNY, THEY AN TITLED TO ALL OF THEIR FEES AND THAT ENDS THE ANALYSIS.
>> EXCEPT THIS COURT'S CASES, BOTH MORITZ AND THE PROSPERI TALK IN TERMS OF THERE BEING TAKEN INTO CONSIDERATION THE OVERALL ISSUES OF ATTORNEYS FEES.
AND THE WAY THAT I WOULD

CONSTRUE THAT AND I WANT YOU AND YOUR OPPONENT TO SPEAK TO THIS, IS THAT WHAT WE'RE REALLY DEALING WITH IN THE STATUTE IS AN ENTITLEMENT TO ATTORNEYS FEES.
THE "MUST" LANGUAGE IN THE STATUTE, I WOULD SAY, IS A PROCEDURAL ISSUE, AS TO WHEN THEY HAVE TO BE ASSESS FIRE DEPARTMENT THEY ARE GOING TO BE ASSESSED.
THEY HAVE TO BE -- MUST BE PART OF THE FEE, OF THE COST.
BUT THAT THE ENTITLEMENT ISSUE, THIS COURT HAS HELD, IS DONE ON THE BASIS OF TAKING INTO CONSIDERATION ALL OF THE CONDITIONS AND ISSUES THAT SURROUND THE ENTITLEMENT TO FEES AND ONE OF WHICH IS WHETHER THOSE FEES WERE NECESSARY IN ORDER TO -- FOR THE PARTLY THAT -- TO PREVAIL ON WHATEVER ISSUE IS BEING PRESENTED.
AND WHERE YOU'VE GOT BOTH SIDES PREVAILING ON SOME ISSUES, IT SEEMS TO ME, YOU HAVE AN ABILITY TO EQUITABLY WEIGH THOSE ISSUES.
>> THAT IS EXACTLY WHAT WE ARE ADVOCATING, JUSTICE WELLS.
THAT IS PRECISELY HOW I READ MORITZ AND THEN TAKING THE NEXT STEP, TO PROSPERI ANSWERING THE QUESTION IN THE AFFIRMATIVE SAYING DOES THE MORRIS TEST -- MORITZ DOESN’T APPLY.
>> DOESN'T IT LEAD TO THE CONCLUSION THE TRIAL COURT COULD ENTER NO FEES AND ALL THESE CONDITIONS BALANCE EACH OTHER TO AN EXTENT....
>> I THINK THAT IS A POSSIBLE RESOLUTION BUT COULD ONLY COME AFTER AN OPINION FROM THIS COURT, THAT WOULD QUESTION THE OTHER DECISIONS FROM DISTRICT COURTS THAT HAVE SAID THAT A TRIAL JUDGE ABUSES HIS DISCRETION IF HE DOES NOT FIND ONE PARTY TO BE THE PREVAILING PARTY, UNDER THIS PARTICULAR

STATUTE.
>> YOU HAVE BEEN FORTHRIGHT IN THE AND I WANTED TO BE SURE BECAUSE THE RECORD IS A LITTLE SLIM BUT MIGHT HELP US IF WE -- WRITE A DECISION.
THE LIEN WAS ALWAYS $12,725.
>> CORRECT.
>> IS THAT CORRECT?
AND NOTHING WAS PAID AT THAT POINT, THE CONTRACTOR NEGLIGENTLY CAUSED DAMAGE TO THE ELECTRIC WIRING.
>> THAT'S CORRECT.
>> AND YOUR CLIENT HAD A SEPARATE BUSINESS, AND SO THEY WENT AHEAD AND THEY PREPARED THIS NEGLIGENCE CAUSED BY THE CONTRACTOR'S WORK.
>> EXACTLY.
>> THEY BUILD -- ISSUED A BILL FOR $11,200, AND AT SOME POINT, THEY DELIVERED A CHECK OR -- FOR $736 BACK TO THE CONTRACTOR?
>> CORRECT.
>> THAT WAS -- WOULD HAVE BEEN THE DIFFERENCE BETWEEN 1270 -- OKAY.
SO THAT IS IN THE RECORD AND I'VE GOT IT HERE.
>> AND THAT WAS REJECTED.
>> AND THE MOST THAT THE CONTRACTOR EVER WAS WILLING TO TAKE OFF OF THE LIEN WAS BETWEEN 320 AND $3200.
>> THAT IS CORRECT.
>> SO, WHEN YOU SAY THIS WAS DRIVEN BY FEES --
IT LOOKS TO ME LIKE IT WAS ALSO DRIVEN BY THE CONTRACTOR DEVALUING THE WORK THAT WAS DONE BY YOUR CLIENT'S COMPANY, IN THE VERY WORK -- I MEAN, THE VERY DAMAGE THEY HAVE CAUSED.
>> CORRECT AND I --
>> I -- I MEAN, IT SEEMS TO ME THAT IF -- IT WOULD BE DIFFERENT IF THEY HAD OFFERED SOMETHING CLOSE TO SAYING, LISTEN, YOU KNOW, LIKE HAD OFFERED 1500, SEEMS LIKE YOU ARE CLOSE AT HAVING OFFERED 730 TO THE CASE, THE CASE THAT SAYS

IF THERE HAS BEEN A SETTLEMENT, BASICALLY AN OFFER TO SETTLE, YOU KNOW, YOU CAN'T -- NO ONE PERSON CAN GET FEES.
SO, WHY IS THAT NOT -- TELL ME WHEN THE FEES BECAME THE ISSUE, AS OPPOSED TO THE FACT THAT GALE REFUSED TO PAY ANYTHING MORE -- I MEAN, TAKE ANYTHING OFF THEIR LIEN MORE THAN BETWEEN 320 AND 3200 --.
>> IF -- IT'S MY BELIEF AND THIS IS ARGUMENT OF COUNSEL, THAT GALE TOOK A POSITION THAT WE ARE NOT GOING TO PAY YOU THE FULL VALUE OF THE SERVICES THAT YOU PROVIDED, AND WE ARE GOING TO OFFER YOU A SMALL AMOUNT, RANGE BETWEEN BEING 320 -- $3200, KNOWING FULL WELL IF MY CLIENT WERE TO REJECT THAT AND THE CASE WERE TO PROCEED THROUGH TRIAL, THAT THEY HAD A FEE AWARD WAITING FOR THEM --
>> YOU ARE SAYING RATHER THAN -- YOU SAY THE CASE IS DRIVEN BY FEES AND LET ME MAKE SURE, YOU SAY IT WAS DRIVEN BY FEES ON THE PART OF THE CONTRACTOR.

>> THAT'S CORRECT.
>> AND YOUR POLICY ARGUMENT IS IF WE ALLOW THIS, SOMEONE GATHER A DOLLAR AWARD AND GET ALL THE FEES FOR THE LITIGATION WE ARE ACTUALLY DRIVING LITIGATION AND NOT SOLVING IT.

>> EXACTLY.
EXACTLY.
>> AND I THINK THAT IS A LOGICAL STEP FORWARD WHEN YOU LOOK AT THE MORITZ OPINION, AND THEN LOOK AT THE PROSPERI OPINION SAYING DOES THE MORITZ TEST, WHO PREVAILED ON THE SIGNIFICANT ISSUES APPLY IN A 713.29 CASE?
IF I AGREE THAT I DON'T THINK UNDER THIS EQUITIES OF THE CASE, GALE OUGHT TO GET ANY FEES, THAT IS WHERE I SEE IT, I'M STILL HAVING PROBLEMS HOW

YOU GET FEES, UNDER THE CIRCUMSTANCE THAT I GUESS I'M HUNG UP -- BY THIS BEING A SEPARATE COUNTERCLAIM FOR SERVICES AND THAT IF YOU BROUGHT IT, LET'S SAY, YOU GUYS HAD TAKEN CARE OF -- PAID THE WHOLE AMOUNT, THE $12,000, AND THEN YOU DISCOVERED THE PROBLEM WITH THE ELECTRIC -- YOU KNOW, WHAT THEY HAD DONE TO YOUR ELECTRIC WIRING, AND THEN YOU -- THEY WOULDN'T PAY THE 11,700 AND YOU SUED THEM, FOR BREACH OF AN AGREEMENT, YOU AGREED YOU WOULDN'T GET FEES.
>> I DO AND --
>> I DON'T KNOW HOW, BECAUSE, IT RAISED AS A -- NOT REALLY RAISED AS A DEFENSE, AS IT IS RAISED AS A COUNTERCLAIM, I WONDER, AND OF -- CASES WITHOUT BEING A PREVAILING PARTY PROVISION, YOU CAN -- AND AGAIN, BECAUSE YOU DIDN'T DEFEAT THE LIEN.
HOW YOU CAN GET ATTORNEYS FEES.

>> THE WAY THE DISTRICT COURTS HAVE CONSTRUED 713.29, THEY HAVE CONSTRUED IT IN THE FOLLOWING MANNER.
THERE MUST BE A PREVAILING PARTY.
THEY HAVE NO DISCRETION TO --
>> YOU ARE SAYING -- NOW, LET'S STEP FORWARD AND WE SAY NO.
>> NOT TRUE.
>> INTEREST ARE CIRCUMSTANCES.

>> THIS IS THE PERFECT EXAMPLE OF A CASE WHERE THERE WAS NOT A A PREVAILING PARTY AND IF THE COURT WERE TO DETERMINE REALLY UNDER THE FACTS OF THIS CASE, NEITHER PARTY WAS ENTITLED TO FEES, THEN THAT IS CERTAINLY SOMETHING THAT THIS COURT CAN DO.
BUT, THAT WOULD BE YOU A CHANGE IN THE LAW AND THAT IS WHY THAT HAS NOT HAPPENED IN THE PAST, IF THIS COURT ISSUED AN OPINION SAYING, UNDER THESE

CIRCUMSTANCES, THAT IS WITHIN
THE DISCRETION OF THE TRIAL
JUDGE, TO SAY UNDER THE
EQUITIES, REALLY, NEITHER PARTY
DESERVES FEES.
>> -- WITH A NET
JUDGMENT IN THIS CASE.
>> I'M SORRY.
>> WHO ENDED UP WITH A NET
JUDGMENT?
>> GALE.
1,000 -- 1,500 --.
>> THE CONTRACTOR ENDED UP WITH
A NET JUDGMENT.
>> THAT'S CORRECT.
>> IS THAT CORRECT.
>> THAT'S CORRECT.
>> WHY SHOULDN'T THE CONTRACTOR
THEN BE ENTITLED TO SOME FEES?

THE CONTRACTOR SHOULD NOT BE
ENTITLED TO SOME FEE BECAUSE
THE CONTRACTOR WENT ONTO MY
CLIENT'S PROPERTY, AND NEGLIGENTLY
PERFORMED THEIR SERVICES.
>> LET'S STOP THERE FOR A
MINUTE.
THEY MAY HAVE NEGLIGENTLY
PERFORMED THE SERVICES BUT NOW
THERE HAS BEEN A DETERMINATION
THAT THEIR NEGLIGENCE CAUSED
DAMAGES THAT WERE LESS THAN THE
AMOUNT THEY WERE OWED.
>> THAT'S RIGHT.
>> WHY, WHY -- IN OTHER WORDS,
-- EVEN IF YOU HAVE ACCEPTED
THE PROPOSITION THAT YOU COULD
ENTANGLE THESE THINGS TOGETHER,
SEEMS TO ME THE LEGISLATURE
REALLY IS TAKING SORT OF A
MODEL CASE WHEN THEY PASS
LEGISLATION LIKE THIS.
A SIMPLE CASE.
YOU ARE SAYING, A CONTRACTOR
WORKS ON A PROJECT, THE -- HE'S
NOT PAID, OR SHE'S NOT PAID,
WHATEVER AND THEN THEY FILE A
LIEN AND HAVE TO SUE TO HAVE
THE LIEN ENFORCED AND IF THEY
PREVAIL, THEY'LL GET FEES, TOO.

IF THEY --
>> THAT'S CORRECT.
>> HAD TO DO THAT AND THAT IS A

VERY SIMPLE, EASY ONE YOU KNOW
-- ONLY WHEN YOU THEN HAVE IT
ENTANGLED WITH, A COUNTERCLAIM,
OF THE HOMEOWNER, OR THE OWNER
OF THE PROJECT, THAT WE HAVE TO
SEPARATE THESE THINGS OUT.
>> I AGREE THERE IS --
>> BUT NO MATTER WHAT THE
BOTTOM LINE HERE WAS THAT THE
CONTRACTOR PREVAILED.
IS THAT CORRECT.
>> THE CONTRACTOR HAD A
JUDGMENT ENTERED IN THE
CONTRACTOR'S FAVOR BUT I DON'T
THINK THAT --
>> I'M NOT TALKING ABOUT WHAT
THE AMOUNT OF FEES MAY BE.
>> RIGHT.
>> BUT IF THE PROPERTY OWNER,
FOR INSTANCE, SAYS, WELL, I --
I KNOW HOW MUCH MY DAMAGES ARE
AND YOU'LL HAVE TO SUE ME TO
ENFORCE YOUR LIEN OR WHATEVER,
BECAUSE YOU DAMAGED MY PLACE,
TOO.
AND REFUSES TO PAY.
AND IT IS ONLY AFTER -- THEY
GET INTO LITIGATION.
THAT IT TURNS OUT TO BE, YOU
KNOW, WHATEVER AMOUNT THE TRIAL
COURT IN THIS CASE,
PARTICULARLY, WORKED OUT.
WHY SHOULDN'T THE CONTRACTOR IN
THAT SITUATION, SINCE THE
HOMEOWNER IS REFUSING TO PAY,
THAT IS, THE HOMEOWNER MAY
ADMIT THAT THERE IS A VALID
CLAIM, EVEN THE AMOUNT OF THE
VALID CLAIM.
BUT THEY ARE NOT PAYING IT
BECAUSE THEY ARE CLAIMING THAT
-- IN ESSENCE THEY ARE ENTITLED
TO A CREDIT, AND IN THIS CASE
THEY CLAIM THEY WERE ENTITLED
TO A CREDIT THAT THE COURT
FOUND WAS NOT JUSTIFIED.
EVEN THOUGH IT WAS THE -- YOU
KNOW, NOT A VERY LARGE AMOUNT.

>> THE REASON IS, JUDGE ANSTEAD
--
>> LET ME COME BACK TO WHY
SHOULDN'T THE CONTRACTOR HAVING
SECURED THEN A JUDGMENT,

BECAUSE ALTHOUGH PART OF THE HOMEOWNER'S DEFENSE OR COUNTERCLAIM WAS FOUND VALID, THEY ARE STILL WITH A NET JUDGMENT FOR THE CONTRACT.
>> BECAUSE THE JUDGMENT FOR THE CONTRACTOR WAS PURSUANT TO AN AGREED ORDER.
THERE WAS A MOTION FOR SUMMARY JUDGMENT AND AN AGREED ORDER ENTERED IN FAVOR OF THE CONTRACTOR, WHERE MY CLIENT STIPULATED TO THE FACT THAT THE LIEN WAS PROCEDURAL PROPER AND SUBSTANTIVELY CORRECT AND THAT JUDGMENT WAS ENTERED --
>> HOW CAN YOU CALL IT AN AGREED ORDER WHEN THE HOMEOWNER AT ALL TIMES SAID NO, I DON'T HAVE TO PAY THIS CONTRACTOR ANYTHING.
BECAUSE THE AMOUNT OF MY CLAIM EXCEEDS THE AMOUNT OF THE CONTRACTOR'S CLAIM.
>> I CALL IT AN AGREED ORDER, JUSTICE BECAUSE IT WAS AN AGREED ORDER.
COUNSEL AGREED TO THE LANGUAGE OF IT --
>> BUT PART --
>> I AGREE THERE WAS A DISPUTE PRIOR TO THAT AS TO THE AMOUNT.

BUT, THERE WAS NO LITIGATION --

>> YOUR CLIENT DID NOT PREVAIL ON THE ISSUE OF -- THAT THE AMOUNT OF THEIR CLAIM OR COUNTERCLAIM AGAINST THE CONTRACTOR EXCEEDED THE AMOUNT THAT THEY OWED THE CONTRACTOR, IS THAT CORRECT.
>> THAT IS CORRECT BUT THEY PREVAILED ON THE SUBSTANTIAL ISSUES THAT WERE TRIED TO THE COURT AND THAT IS THE LANGUAGE OF THIS COURT AND PROSPERI AND IT'S IMPORTANT BECAUSE THIS LIEN WAS IN THE TRIED TO THE COURT.
IT WAS NOT LITIGATED THROUGH TO A CONCLUSION.
IT WAS THE SUBJECT OF A STIPULATED ORDER.

>> I THOUGHT THE ISSUE ALL ALONG WAS THE AMOUNT OF THE OFFSET, THAT IS, FROM YOUR STANDPOINT, THE AMOUNT OF THE OFFSET WOULD EXCEED THE AMOUNT OF THE LIEN CLAIM FROM THE CONTRACTOR'S POINT OF VIEW, THE AMOUNT OF THE OFFSET WOULD BE LESS THAN THE AMOUNT OF THE LIEN --
>> THAT IS --
>> THE ISSUE --
>> IS THE ISSUE THAT WAS TRIED.

>> AND THEY PREVAILED.
>> I GUESS IT DEPENDS --
>> I'M NOT TALKING ABOUT AMOUNT.
>> NO, I UNDERSTAND THAT AND I GUESS THE ISSUE IS, WHETHER THE TRIAL COURT AND THIS IS WHERE THERE ARE TWO DIFFERENT STANDARDS OF REVIEW TO APPLY, DID THE TRIAL JUDGE ABUSE HIS DISCRETION IN DETERMINING THAT MY CLIENTS WERE THE PREVAILING PARTIES?
AND I DON'T BELIEVE THAT THE -- THAT HE DID BECAUSE, IN ESSENCE, THE CONTRACTOR WAS SEEKING TO RECOVER $12,700 AND THE CONTRACTOR ENDED UP RECOVERING $1500.
>> AND THANKS -- THANKS TO OUR QUESTIONS WE'RE USING UP YOUR REBUTTAL TIME, SO PROBABLY SHOULD PAUSE.
>> OKAY.
THANK YOU.
>> THANK YOU.
>> PLEASE THE COURT, GOOD MORNING, YOUR HONORS, EDWARD BAIRD, I REPRESENT THE RESPONDENT, GALE INDUSTRIES.
>> LET ME FOLLOW UP ON JUSTICE ANSTEAD'S QUESTION.
NOW, YOU REPRESENTED THE LIENOR.
>> THAT'S CORRECT AND YOUR CLIENT PLACED A LIEN ON THE TRYTEK PROPERTY, 12,700 --.
>> 725 I BELIEVE, YOUR HONOR.

>> AND YOU WOULD YOU AGREE THE

REASON THIS CASE DIDN'T GET SETTLED WAS BECAUSE OF THE DISPUTE OVER FEES?
>> IN PART, YOUR HONOR, I WAS PRESENT AT THE ACTUAL MEDIATION AND I MAY NEED GUIDANCE FROM THE COURT AS TO EXACTLY HOW MUCH I NEED TO TALK ABOUT WHAT HAPPENED, BUT...
>> YOUR CLIENT IS -- BUT DIDN'T -- THE JUDGE ENTERED AN ORDER WHICH SAID THAT YOU WERE ENTITLED TO, WHAT, $1500.
>> YES, YOUR HONOR, ROUGHLY $1500 ON THE LIEN, CORRECT.
>> RIGHT.
AND SO WHAT ONE -- THE LITIGATION WAS ABOUT, WAS THE AMOUNT OF THE LIEN, RIGHT I MEAN, THAT WAS IN ESSENCE WHAT THE WHOLE LITIGATION WAS ABOUT.

>> THE LIEN HOLDER GALE NEVER HAD A FORECLOSEABLE INTEREST, BECAUSE IN THIS CASE IT TURNED TON A TRANSFER BOND NEVER HAD A RIGHT TO RECOVER AGAINST THE BOND UNLESS AND UNTIL THE COUNTERCLAIM WAS LIQUIDATED AND THE LIEN IS THE ISSUE?
THE WHOLE ISSUE WAS THE AMOUNT OF THE LIEN.
>> LIEN, THAT'S CORRECT.
>> AND SO, IF YOU HAVE LIENED A PROPERTY, FOR $12,000, AND YOU ONLY RECOVER $1500, HOW CAN IT BE THAT YOU ARE THE PREVAILING PARTY.
>> BECAUSE, THERE ARE AMPLE AND ADEQUATE PROTECTIONS IN PLACE FOR AN OWNER TO PROTECT HIMSELF IN THAT SITUATION.
>> BUT YOU DIDN'T PREVAIL ON GETTING THE AMOUNT OF YOUR LIEN, CORRECT.
>> THE LIEN HOLDER PREVAILED THAT'S PREVAILING PARTY, YOUR HONOR.
>> HOW?
HOW?
IF YOU HAVE GOT A -- YOU ARE FORECLOSING A LIEN AND TRYING TO ENFORCE A LIEN, IN WHICH THE AMOUNT IS $12,000, AND YOU ONLY

RECEIVE $1200, OR $1500, IT JUST SEEMS TO ME THE PLAIN MEANING OF "PREVAILING" IS THAT THE PARTY THAT WAS CONTESTING THE AMOUNT OF THE LIEN PREVAILED.
>> WE HAVE CASE LAW TO GUIDE US THERE, YOUR HONOR, NOT ONLY DID GALE NEED TO RECOVER AFFIRMATIVELY ON THE LIEN WHICH IT DID, IN ACCORDANCE WITH THE DECISION CITED IN THE BRIEFS, BUT, ALSO RECOVERED MORE THAN WAS EARLIER OFFERED IN SETTLEMENT BY THIS OWNER AND THAT IS A KEY POINT BECAUSE THE OWNER HAS THAT AT HIS DISPOSAL AND CAN INSULATE HIMSELF BY SIMPLY OFFERING THAT AMOUNT DURING LITIGATION OR PRE-LITIGATION --
>> WAIT.
WAIT.
NOW I WANT TO UNDERSTAND THAT.

BECAUSE WHAT WE ARE TALKING ABOUT IS THAT IT SEEMS IF YOUR CLIENT HAD NEGLIGENTLY CAUSED DAMAGE TO THE HOMEOWNER, IT WASN'T ANY ISSUE THAT YOUR WORK -- I MEAN, YOUR WORK, INSULATION WORK, CAUSED THEM DAMAGE.
WOULD YOU AGREE, AND THEN -- THEY WERE NEVER SAYING AND MAYBE IS A MATTER OF HOW WE TALK, THEY WERE NEVER DISPUTING THE AMOUNT OF YOUR LIEN.
THEY ALWAYS AGREED IT WAS $12,725.
>> NOT WHAT THEIR PLEADINGS SAY, THE AFFIRMATIVE DEFENSE SAYS THE LIEN WAS FRAUDULENT.
>> BUT THAT -- WAS THAT TRIED, WHETHER -- I THOUGHT IT WAS -- I THOUGHT THEY END UP, WHATEVER THEY SAID IN THE PLEADING, BEFORE TRIAL, THEY STIPULATED YOUR LIEN WAS VALID.
>> PRIOR TO TRIAL, THAT'S CORRECT.
>> THAT IS AN AGREED-ON SUMMARY JUDGMENT.
>> ULTIMATELY.
>> AND THE LIEN AMOUNT FROM MY

POINT OF VIEW WAS NOT DISPUTED.

THE ONLY ISSUE WAS, THAT YOU CAUSED THEM DAMAGE.
SO YOU CAUSED THE HOMEOWNER TO HAVE TO GO DO SOMETHING.
>> THAT'S CORRECT.
>> AND HOMEOWNERS COULD EITHER HAVE SAID, I'LL PAY THE $12,725, OR -- THEN I WONT HAVE ANY THREAT OF HAVING TO PAY ATTORNEYS FEES, BUT, YOU ARE GOING TO PAY FOR EVERY CENT OF WHAT YOU DAMAGE WHICH IS AT LEAST $11,000.
AND MAYBE UP TO $18,000.
SO WHY ISN'T WHAT WAS TRIED NOT THE AMOUNT OF THE LIEN BUT HOW MUCH YOU DAMAGED THE HOMEOWNER BY YOUR NEGLIGENCE.
>> BECAUSE CANNOT RESOLVE ONE OUT THE OTHER, THERE IS NO JUDGMENT AT THE END OF THE DAY AFTER A TRIAL --
>> WELL, YOU COULD.
I MEAN, YOU KNOW, PERSONAL INJURY CASES THERE ARE COUNTER CLAIMS AND SOMETIMES THEIR COUNTER CLAIMS AND SOMETIMES THERE ARE NOT COUNTER CLAIMS AND THE LIEN -- AND WAS A JUDGMENT AND COULD HAVE ELECTED, I GUESS -- YOU ARE SAYING A COMPULSORY COUNTERCLAIM, CORRECT.
>> YES.
>> THAT COMPULSORY COUNTERCLAIM WAS SO, THEREFORE, NOW, I'LL GO BACK TO THIS, IF IT'S A COMPULSORY COUNTERCLAIM IT IS PART OF THE LIEN ACTION, THEN WHY ISN'T WHAT THE JUDGE DID, IS TO SAY, IF -- THERE HAS TO BE A PREVAILING PARTY YOU CERTAINLY, BY ONLY RECOVERING $1500, MY FINDING THAT ALMOST EVERY PENNY OF THEIR ORIGINAL BILL WAS VALID AND ENFORCEABLE, YOU DIDN'T WIN.
YOU LOST.
>> BECAUSE THIS OWNER HAD AN OPPORTUNITY TO PROTECT ITSELF THROUGH EITHER AN OFFER OF JUDGMENT PURSUANT TO 768.79

WHICH IT NEVER DID OR
SETTLEMENT OFFER WHICH EQUALLED
OR BETTERED THE JUDGMENT --
>> UNDER CU.
>> I'M SORRY.
>> UNDER THE CU CASE THEY COULD
HAVE OFFERED AN AMOUNT?
BUT THAT DECISION WAS BASED ON
EQUITY, CORRECT?
DON'T YOU SEE THAT ALL OF OUR
CASES, WHERE I AM HAVING
TROUBLE, BECAUSE WE ARE
SUPPOSED TO CONSTRUE PREVAILING
PARTY ACCORDING TO A STATUTE
AND ALL OUR CASES SEEMS TO GO
OFF ON, WE WANT TO DO EQUITY
AND THAT IS WHAT IT LOOKS LIKE.

>> OF COURSE THE JUDGMENT IN
THE AMOUNT TESTS GIVEN THE
OWNER PROTECTIONS PROVIDES A
LEVEL PLAYING FIELD AND IS
EQUITABLE TO BOTH PARTIES AND
THEY HAVE AN OPPORTUNITY TO SET
THEMSELVES UP FOR A FEE AWARD.

>> WHY ISN'T IT MORE EQUITABLE
IN THIS SITUATION TO FIND THAT
YOUR CLIENT IS NOT THE
PREVAILING PARTY, SINCE YOUR
CLIENT REALLY ONLY OFFERED THEM
AT MOST $3500 FOR THIS WORK,
AND THEY REALLY PREVAILED GUY
GETTING -- BY GETTING 11,000
FOR THE WORK.
>> ACTUALLY, YOUR HONOR, I
THINK THE RECORD SPEAKS TO THE
EXACT AMOUNT BUT GALE DID IN
FACT SERVE AN OFFER OF
JUDGMENT, PROPOSAL FOR
SETTLEMENT DURING THE COURSE OF
THE LITIGATION AND I RECALL IT
WAS A LARGER DISCOUNT THAN THE
APPROXIMATE 3200 --.
>> WHY DIDN'T THE JUDGE LOOK
AT THAT, THAT IS NOT IN HIS
ATTORNEYS FEE ORDER AND I DON'T
SEE THAT IN THE RECORD.
IS IT IN THE RECORD.
>> IT IS IN THE TRIAL
PLEADINGS.
>> IF IT IS PART OF SOMETHING
AND I HADN'T READ THAT IN
ANYBODY'S BRIEF, YOU KNOW, YOU

OUGHT TO MOVE TO SUPPLEMENT.
>> FROM MY PERSPECTIVE, YOUR HONOR WE NEVER HAVE TO GET THERE.
>> MAYBE FROM OUR PERSPECTIVE YOU MIGHT WANT TO --
>> I'LL BE GLAD TO SUPPLEMENT WHATEVER THE COURT WOULD LIKE.

>> BUT THE RECORD ACTUALLY SAYS, AT MOST, YOU ARE WILLING TO OFFER $3500.
>> 32 -- 3600 --.
>> WHATEVER THAT AMOUNT IS. BUT THEY ACTUALLY PREVAILED ON GETTING $11,000.
SO, IT SEEMS TO ME, WHEN YOU ARE BALANCING THE EQUITIES HERE, THAT THE TRYTEK REALLY PREVAILED UNDER SIGNIFICANT -- ON THE SIGNIFICANT ISSUE, THEY GET $11,000 AND YOU ONLY OFFERED 3600.
>> WELL, THIS IS WHY THE SIGNIFICANT ISSUES TEST IS SO RIDDLED WITH COMPLICATIONS, AND SUBJECT TO MANIPULATION AND THIS IS A PERFECT EXAMPLE OF HOW IT OCCURRED.
THE TRYTEK'S THEORY IS THE ONLY SIGNIFICANT ISSUE, QUOTE, TRIED BEFORE THE COURT, THAT IS IN FRONT OF THE JUDGE AT THE TRIAL WAS THE VALUE OF THE COUNTERCLAIM, SIMPLY BECAUSE THE LIEN WAS STIPULATED TO AND CARVED OUT OF THE LITIGATION.
>> WHAT IS WRONG WITH THAT.
>> IT SEEMS TO ME THAT THAT IS ALL THAT HE HAD TO TRY, BECAUSE THERE WAS NO ISSUE AS TO THE AMOUNT OF THE LIEN.
>> THAT'S A PROBLEM, BECAUSE THERE IS NO DISCRETION IN THAT INSTANCE.
IF THE SOLE SIGNIFICANT ISSUE IN FRONT OF THE JUDGE WAS ONLY THE COUNTERCLAIM, THERE WAS ONLY ONE ISSUE HE COULD PICK FROM AS TO WHO THE PREVAILING PARTY WAS AND HAD NO DISCRETION TO A SAY GALE THIS IS PREVAILING PARTY AND IF THE SOLE ISSUE WAS THE CORE CLAIM

ITSELF, AND THE AMOUNT OF THE BACK CHARGE THE ONLY THING THAT HE HAD TO GO ON, THE SOLE ISSUE WAS THE COUNTERCLAIM AND HE HAD TO CHOOSE THE TRYTEK --
>> LET ME GO BACK TO REALLY PERCEIVED TO SOME DEGREE TO BE THE ORIGINAL QUESTION TO YOUR POINT.
AND IT REALLY IS SORT OF A QUESTION OF, YOU KNOW, WHY IN THE WORLD ARE WE HERE?
THAT IS THAT YOU -- YOUR OPPONENT HAS STIPULATED TO BOTH THE LIEN AND THE AMOUNT THE LIEN.
AND YOUR CLIENT HAS SAID WE ARE AT FAULT.
WE DID CAUSE YOU DAMAGE.
OKAY?
AND OUR ONLY DISAGREEMENT IS ABOUT THE EXTENT OF THAT.
WHAT THE -- HOW YOU WOULD MEASURE THAT IN THE -- AND THE DOLLAR AMOUNT.
WHY IN THE WORLD COULDN'T TWO LAWYERS THEN, EITHER WORK IT OUT BETWEEN THEMSELVES, OR -- AND I REAL LAYS -- REALIZE THE MEDIATION LAWS HERE, BUT, OR GO TO A TRIAL JUDGE AND SAY, JUDGE, THIS IS NOT A VERY COMPLICATED MATTER.
AND WE WANT TO -- AT ALL -- WE WANT TO BE VERY ETHICAL AND PROFESSIONAL LAWYERS, AND SAVE OUR CLIENT MONEY, AND ALL WE HAVE FOR YOU TO TRY IS WHAT YOU JUST DESCRIBED.
THAT IS, THAT THEY'VE AGREED ON THE AMOUNT THAT THEY OWE US, AND WE HAVE OFFERED THEM SOMETHING ON THEIR COUNTERCLAIM, BUT WE DO AGREE THAT WE DAMAGED -- WE CAUSED THIS DAMAGE, AND IF YOU COULD JUST HEAR SOME BRIEF TESTIMONY ABOUT THAT ISSUE, YOU REALLY COULD RESOLVE THIS CASE FOR US.

AND WE CAN GET OUT OF THIS CASE WITH A MINIMUM OF LEGAL SERVICES OR LEGAL FEES.
NOW WHY IN THE WORLD DIDN'T

THAT HAPPEN IN THIS --
>> YOUR HONOR I'M NOT PROUD TO BE STANDING HERE TALKING ABOUT THAT ISSUE, IN ALL HONESTY I THINK THE CASE WAS FILED IN 2001 AND I INHERITED IT AS ONE OF THE FIRST CASES THAT I TOOK ON WHEN I BECAME A MEMBER OF THE FLORIDA BAR.
ALL I CAN SAY IS THAT ON BEHALF OF MY CLIENT, THE EFFORT WAS MADE AND UNFORTUNATELY, IT WAS UNABLE TO COME TO FRUITION.
AND THE EFFORT WAS DEFINITELY MADE TO DISPOSE OF THE CASE.
>> LET ME UNDERSTAND, IF WE GO WITH THE 4th AND 5th DISTRICTS, LET'S SAY THAT YOUR ATTORNEYS FEES ARE AS MUCH AS THEIRS, $55,000, STIMULATED AMOUNTS, ARE WE REALLY HAVING A RULE OF LAW IN THIS STATE THAT WOULD SAY THAT YOUR LIEN -- WELL, BOTH -- $12,725, YOU RECOVER $1525, AND IF YOU HAD RECOVERED $500 YOU WOULD BE ENTITLED TO 55,000 IF THEY HAD BEAT THIS LIEN AND GOTTEN A JUDGMENT INSTEAD OF $11,000 --
$11,200, IF THEY GOT A JUDGMENT OF $12,725, NO LIEN, THEY'D GET $55,000 OR IF THEY BEAT THE LIEN, AND GOTTEN A NET JUDGMENT OF A THOUSAND, THEY'D GET $55,000.
DO WE REALLY THINK THAT THAT -- DOES THAT MAKE SENSE TO YOU.
>> ACTUALLY IT DOES GIVE THIS PROTECTS OF THE PARTIES, YOUR HONOR.
>> IT DOES, AN ALL -- SHOULD BE AN ALL OR NOTHING SITUATION.
>> IT SHOULD, 713.29 IT IS MANDATORY, THE CASES CITED IN THE BRIEFS.
>> LET ME ASK YOU A QUESTION WITH REGARD TO THE STATUTE, AND WHERE IT GOES.
THE STATUTE, WITH REGARD TO LABORERS LIENS AND MECHANICS LIENS AND THOSE KIND OF THINGS, IS, EQUITABLE IN NATURE, IS IT NOT BECAUSE IT GIVES A LIEN WHICH IS AN EQUITABLE REMEDY.

>> THE LIEN LAW ITSELF IS TO BE CONSTRUED LIBERALLY IN THE LIENOR'S FAVOR.
>> THAT WAS HISTORICALLY BUT WASN'T THERE AMENDMENT AT ONE POINT TO THE LEGISLATION THAT WOULD INDICATE IT OUGHT NOT TO BE INTERPRETED IN FAVOR OF EITHER PARTY?
>> I'M NOT CERTAIN WHAT THE LEGISLATION YOUR HONOR IS REFERRING TO, BUT I DO KNOW THE LIENOR DOES NOT HAVE HEY -- NOT HOLDING ALL THE CARDS IN THE SITUATION, LIENORS ARE REQUIRED TO JUMP THROUGH ALL KIND OF PROCEDURES.
>> I AGREE, BUT THAT IS TRUE, AND THERE ARE MECHANISMS TO PROTECT THE HOMEOWNER OR THE OWNER OF THE PROPERTY AS WELL.

>> ON COMMON LAW BASIS.
>> BUT IF WE ARE LOOKING AT -- THIS WAS ORIGINALLY DESIGNED TO BE AN EQUITABLE REMEDY, TO PROTECT UNDER THE CIRCUMSTANCES, YOU HAVE TO FOLLOW THE RULES AND WE UNDERSTAND THAT, THEN, IF WE ARE INTERPRETING THE STATUTE, WHY, THEN, IS IT NOT REASONABLE, LOGICAL, AND A NORMAL LEGAL FOLLOW THAT YOU WOULD USE EQUITABLE PRINCIPLES IN APPLICATION OF A MATTER OF FEES, AND IT DOESN'T REALLY MAKE ANY DIFFERENCE IN THE CASE WHETHER IT IS A COUNTERCLAIM OR DISPUTE ON THE AMOUNT. BECAUSE, REALLY WE ARE TALKING ABOUT WHAT IS OWED, WHAT WILL BE ULTIMATELY OWED IN THE CASE, ISN'T IT?
>> WELL, SURE.
>> ISN'T THAT WHERE WE ARE.
>> AT THE END OF THE DAY, EQUITABLE PRINCIPLES ARE IN PLACE IN A JUDGMENT -- LIKE I SAID THERE IS A LEVEL PLAYING FIELD THERE AND BOTH PARTIES KNOW THE RULES GOING IN AND THERE IS PREDICTABILITY AN CONSISTENCY IN THE DECISIONS OF

TRIAL COURTS IF THEY HAVE A SET
OF RULES TO FOLLOW.
AND IF --
>> LET'S SAY, IN THIS CASE IT'S
NOT A COUNTERCLAIM BUT IT IS A
CLAIM ON BEHALF OF THE LABORERS
OR THE MECHANIC, THAT I HAVE --
WE HAVE WORKED AND WE'RE OWED
$20,000.
AND IN THE NATURE OF A
COUNTERCLAIM CLAIM, THERE
IS -- COUNTERCLAIM AND THERE IS
NO DAMAGE AND THE OWNER OF THE
PROPERTY, SAYS, SORRY, YOU'RE
NOT AND THE MAXIMUM AMOUNT YOU
SHOULD BE DUE REMAINING BECAUSE
THE CONTRACTORS CHANGE ORDERSES
AND ALL KIND OF STUFF GOES
THROUGH AND AT THE END OF THE
DAY WE ARE DOING AN ACCOUNTING
AND THEY SAY NO YOU ARE NOT
ENTITLED TO MORE THAN $2,000
AND THAT IS LITIGATED, AND THE
CONTRACTOR RECEIVES $500.
WHY UNDER THOSE CIRCUMSTANCES
-- DOESN'T HAVE TO BE A
COUNTERCLAIM, TOTALLY UNDER THE
LIEN LAW, SHOULD WE NOT TAKE A
LOOK AT THAT PHRASE, PREVAILING
PARTY, IN OTHER THAN JUST
DOLLAR AMOUNTS BECAUSE YOU HAVE
TO ANALYZE WHAT THE PROBLEM WAS
ABOUT.
WHAT IS WRONG WITH THAT TYPE OF
REASONING THAT THOUGHT PROCESS?

>> WELL, BECAUSE, IF YOU ARE
NOT SPEAKING SPECIFICALLY TO A
COUNTERCLAIM SITUATION IT
DIFFERENCE THAN HERE.
BUT IN A --
>> WHY?
BECAUSE AT THE UNDER OF THE DAY
IT IS JUST AN ACCOUNTING ON WHO
OWES WHO WHAT.
>> AND AN OWNER HAS AN
OPPORTUNITY AT ANY TIME,
PRE-LITIGATION, DURING THE CASE
AND TRIAL EVEN TO MAKE A
SETTLEMENT OFFER AND THE LIENOR
HAS TO BEAT THAT AND THAT IS
THE PUPS OF HAVING THE FACT
FINDER TO BEGIN WITH, TO
LIQUIDATE THE AMOUNT OF

ENTITLEMENTS.
>> YOU ARE ADDING ON TOP OF IT, THOUGH, THE CONCEPT OF OFFERS AND SETTLEMENT AND THOSE KIND OF THINGS, THE STATUTE DOES NOT TALK IN TERMS OF THAT.
>> WELL, 768.79 --
>> NO, NO, NO, UP 13, MECHANICS LIENS STATUTE DOES NOT TALK IN TERMS OF OFFERS OF JUDGMENT OR OFFERS OF SETTLEMENT, DOES IT.

>> NO, THE CASE IS INTERPRETING IT, THOUGH, DO, PENNINGTON VERSUS EVANS AND HIDAL VERSUS S & S DRYWALL CASE SPECIFICALLY SPEAK TO THE CONTRACTORS' REQUIREMENT TO RECOVER NOT ONLY ONE DOLLAR OR ONE PENNY BUT TO BEAT WHATEVER OFFERED AND WE HAVE AN OPPORUNITY TO SAY REASONABLE DEDUCTION TO BE X AMOUNT.
>> JUSTICE LEWIS IS SAYING THE LAW AS IT HAS DEVELOPED HAS TAKEN ON A COMMON SENSE, WHETHER YOU CALL IT COMMON SENSE EQUITY BECAUSE THE CU DECISION AN EVEN READ PROSPERI THE OWNER SHOULD HAVE RECOVERED AND GO AWAY AND IS NOT FAIR IN THIS SITUATION AND THE CU CASE THOUGH THERE WAS NOTHING TO DO WITH AN OFFER OF JUDGMENT, THEY SAY THAT IS NOT FAIR AND WE GO BACK TO -- YOU ARE NOT ADDRESSING FAIRNESS HERE.
ME, AT LEAST.
FAIRNESS AS TO WHY YOU SHOULD GET $55,000 IN FEES.
>> WELL, YOUR HONOR BRINGS UP THE PROSPERI CASE AND THERE WAS TO LIEN AND A LENGTHY DISCUSSION BUT NOT A LIEN THAT WAS RECOVERED, THERE WAS A LOON THE CONTRACTOR FAILED TO FORECLOSE UPON AND HE SUBMITTED FRAUDULENT AFFIDAVITS.
>> AND THEREFORE UNDER NORMAL SITUATIONS, THE HOMEOWNER --
>> THE COURT STATED THAT, ABSOLUTELY.
>> BUT THEY DIDN'T AND IMPOSED EQUITY AND THEY -- BASICALLY

SAID HOMEOWNER, UNDER THESE,
CIRCUMSTANCES EQUITY WILL NOT EN --
CIRCUMSTANCES EQUITY WILL NOT
ENTITLED YOU TO FEES.
>> IN THE ABSENCE OF A LIEN,
THE RULE CAME IN AS A FACTOR
AND BECAME IN THE --
>> ALL WE ARE DOING AGAIN IS
EVOLVING INTO WHAT SEEMS FAIR
UNDER ALL THE CIRCUMSTANCES,
SO, WITH THAT, THE JUDGE LOOKS
AT THIS AND SAYS, I THINK THIS
IS WHAT IS FAIR UNDER ALL OF
THE CIRCUMSTANCES, AND BOTH OF
YOU ARE SAYING, SOMEBODY HAS TO
WIN, AND HE SAID IF SOMEONE HAS
TO WIN I THINK THEY SHOULD WIN
AND WHY ISN'T THAT, IF WE
ACCEPT THAT THE TRIAL COURT DID
EXERCISE DISCRETION AND LOOKED
AT THE ISSUES, WHY ISN'T IT
APPROPRIATE TO AFFIRM THE TRIAL
COURT.
>> IF WE HAVE' LIEN IN PLACE AS
WE DO HERE, AND USE THE
SIGNIFICANT ISSUES TEST, AND AS
I CITE IN THE BRIEF WILL SET UP
A FRAMEWORK FOR OWNERS TO
EITHER IN THE PLEADINGS, ADMIT
TO THE PROCEDURAL ASPECT OF THE
LIEN OR HERE, STIPULATE TO THE
PROCEDURAL SUFFICIENCY AN CARVE
IT OUT AS A, QUOTE, SIGNIFICANT
ISSUE IN THE CASE.
>> WHAT IS YOUR CONSTRUCTION OF
THE LAST PHRASE IN THE -- IN
7:-- 713.29 WHERE IT SAYS AS IN
EQUITABLE ACTIONS, WHAT DOES
THAT MEAN?
>> YOUR HONOR, IN THE BRIEFS
ALSO CITED TO SHALL BE TAXED AS
COSTS AS ALLOWED IN EQUITABLE
ACTIONS.
AND TO ME, THAT TOOK ME TO THE
COST STATUTE, 57.041.
AND THERE IS A SECTION IN THE
BRIEF CONTAINING ARGUMENT ON
THAT POINT WHICH, STATES THE
PARTY RECOVERING JUDGMENT SHALL
BE AWADDED ITS COSTS AND READ
THE PHRASE A LITTLE BIT -- FEW
MORE WORDS INTO IT, THAT THE
LOON, THE LIENOR'S FEES,
PREVAILING PARTY'S FEES WILL BE

TAXED AS COSTS AS ALLOWED IN EQUITABLE ACTIONS.
>> IF YOU GO BACK TO JUSTICE LEWIS'S EXAMPLE, WHERE YOU HAVE A LIENOR WHO AS A -- HAS A LIEN -- SAYS HE HAS A LIEN OF $20,000, THE HOMEOWNER DISPUTES WITHOUT A COUNTERCLAIM, SAYING THIS IS $2,000, AND THIS LIENOR ENDS UP WITH $500.
UNDER THOSE CIRCUMSTANCES, YOU ARE TELLING US THAT THE LIENOR SHOULD GET FEES.
>> IF THE OWNER HAS -- I WANT TO BE SURE I UNDERSTAND.
>> $55,000, LIKE WE HAVE HERE, IS THE AMOUNT OF FEES, THE LIENOR SHOULD GET $55,000 IN FEES, EVEN THOUGH, HE OR SHE ONLY RECOVERED $500.
>> UNLESS THE OWNER OFFERED MORE THAN THAT IN SETTLEMENT PREVIOUSLY, IF THE OWNER OFFERED $500 OR $501, THE CASE IS -- IT CANNOT BE THE PREVAILING PARTY.
>> ANYWHERE IN MECHANICS LIEN STATUTE IT SAYS WHAT YOU SAID.

>> IN THE STATUTE ITSELF, NOT IN THE LANGUAGE.
>> IT'S NOT THERE.
>> IN THE CASES INTERPRETING THE STATUTE, THAT'S CORRECT.
>> NOT IN THE STATUTE, CERTAINLY AT ALL.
AND LET ME ASK YOU THIS QUESTION.
IS THERE SUCH A THING AS A LIEN IN THE ABSTRACT OR DOES A LIEN ALWAYS HAVE TO HAVE AN AMOUNT ATTACHED TO IT.
>> LIENS AS FAR AS -- I HAVE NEVER SEEN ONE WITHOUT AN AMOUNT RECORDED IN THE PUBLIC RECORD.
>> IF WE ACCEPT THAT, THE LIEN AND THE AMOUNT OF THE LIEN IS $20,000, YOU DON'T PREVAIL ON THE $20,000 HOW ARE YOU A PREVAILING PARTY ON THE LIEN.
>> IF YOU DON'T RECOVER EVERY PENNY --
>> YOU SAID THE LIEN AMOUNT, IS

A STATED AMOUNT, AND FILED OF RECORD, AND THAT IS THE LIEN AMOUNT.
WHAT YOU ARE SAYING IS A LIEN IS ANYTHING FROM ZERO OR --1 UP TO THE TOTAL AMOUNT OF THE LIEN AND I'VE NEVER SEEN A LIEN RECOGNIZED IN THAT FASHION.
>> IT DOESN'T START AT 1, IT STARTS AT 1 MORE THAN EARLIER OFFERED TO THEM.
>> WELL, OKAY.
.
>> WHO RECEIVED THEIR COSTS IN THE CASE?
>> NO ONE YET YOUR HONOR.
>> WHO DID THE JUDGE AWARD COSTS TO.
>> I THINK THE FEES AND COSTS JUDGMENT ORIGINALLY IN FAIR OF TRYTEK.
>> AND YOU DIDN'T APPEAL THE COST JUDGMENT.
>> I THINK THE -- IN THE 5th IT WAS DISCUSSED.
>> SAYING FEES -- THEY'VE GOT COSTS AND SHOULD GET FEES? YOU CAN ANSWER --
>> NO, I'M SAYING, GALE SHOULD BE ENTITLED TO RECOVER BOTH.
>> YOU DIDN'T -- DID YOU NOT -- I DIDN'T SEE, MAYBE I'LL LOOK BACK, YOU DID NOT APPEAL THE FACT THAT -- OR THE ISSUE IN THE CASE, IS NOT WHO GOT COSTS.

>> I'LL BE GLAD TO SUPPLEMENT AS WELL, YOUR HONOR, STANDING BEFORE THE COURT, I DON'T KNOW.

>> AND WITH THAT, YOU HAVE USED ALL OF YOUR TIME.
>> THANK YOU.
>> MAY I HAVE LEAVE TO SUPPLEMENT AS TO THE OFFER OF JUDGMENT AS THE COURT REQUESTED?
>> WHY DON'T WE FIND OUT WHAT THE... WHAT THE PETITIONER... IS THIS OFFER OF JUDGMENT PART OF THE RECORD?
>> IT'S NOT PART OF RECORD ON APPEAL AS FAR AS I KNOW.
>> BUT WASN'T IT PART OF THE

5th DISTRICT.
>> NO, AND I NEVER BRIEFED IT AT THE 5th, MORE DID I BRIEF IT AT THIS LEVEL.
>> WE CAN -- THEN I THINK YOU WOULD HAVE TO MOVE TO -- RELIEF TO SUPPLEMENT AND THE COURT WILL GO --...
>> THANK YOU.
I THINK THE COURT HAS BEEN OBVIOUSLY MADE NUMEROUS STATEMENTS TO THIS EFFECT, THIS HAS TO BE ABOUT EQUITY AND EQUITY CANNOT RESULT IN AN AWARD OF FEES FOR A CONTRACTOR WHO NEGLIGENTLY PROVIDES SERVICES.
THE ONLY THING MY CLIENT DID WRONG WAS
HIRED THE WRONG CONTRACTOR.
>> LET'S TAKE, THOUGH REVERSE OF THAT, THIS DEVIL'S ADVOCATE HERE IS THAT THIS WAS DESIGNED SO THAT INDIVIDUALS -- A GUY BRINGS HIS LADDER AND HAMMER OVER AND BUILDS YOU A PORCH.
AND AT THE END OF THE DAY YOU REFUSE PAY HIM.
AND THIS WAS DESIGNED TO GIVE HIM A MECHANISM SO THAT YOU COULD BE PAID AND FEED HIS FAMILY AND REALLY WHERE IT GOES BACK TO, THE FUNDAMENTAL STUFF, MORE SOPHISTICATED NOW, I UNDERSTAND, BUT, IT GOES BACK TO THAT.
AND, IF YOU DON'T PAY HIM AND HE'S ENTITLED TO SOMETHING, THEN, HE OUGHT NOT, NOT ONLY NOT BE PAID FOR HIS WORK AND HAS TO GET A LAWYER AND PAY THE LAWYER AND EAT UP EVERYTHING HE HAS DONE.
>> FOR THE PURPOSE OF THE STATUTE.
>> THAT THIS IS PURPOSE.
>> ABSOLUTELY AND THE ISSUE IS IN THIS CASE, THAT IS THE RULE OF LAW THAT THE JUDGE APPLIED, THAT HE GETS TO FOLLOW PROSPERI AND DETERMINE WHO PREVAILED ON THE SUBSTANTIAL ISSUES TRIED IN THE CASE, DOES THE JUDGE APPLY THE CORRECT RULE OF LAW UNDER

THIS CIRCUMSTANCE AND --
>> YOU AGREE --
>> IF THIS GENTLEMAN COMES BY THE HOUSE WITH A HAMMER AND NAIL AND BUILDS A PORCH AND CREATES DAMAGE TO OTHER ELEMENTS OF THE PROPERTY THAT IS AN ISSUE THAT I THINK THE TRIAL JUDGE SHOULD BE ALLOWED TO CONSIDER.
>> RULE OF LAW WE'RE DISCUSSING IS NOT DAMAGING SOMEBODY'S PROPERTY, WOULD YOU AGREE, WE ARE REALLY TALK ABOUT --
>> EQUITY --
>> ANY DISPUTE WITH REGARD TO THE AMOUNT OWED TO A PERSON WHO CLAIMS A LIEN.
>> ABSOLUTELY.
>> OKAY.
.
LET'S USE IT, THOUGH THE EXAMPLE THE MAN DIDN'T DAMAGE ANYTHING, HE IS JUST -- A FIGHT ABOUT THE AMOUNT.
>> THEN THE TRIAL JUDGE SHOULD HAVE THE DISCRETION TO BE ABLE TO DETERMINE WHICH OF THE PARTIES PREVAILED ON THE SUBSTANTIAL ISSUES THAT WERE TRIED, RATHER THAN --
>> AND THAT JUDGE -- REFUSED ATTORNEYS FEES.
>> I'M SORRY.
>> IS THE JUDGE REFUSED ATTORNEYS FEES.
>> ONLY IF THE COURT ISSUES AN OPINION SAYING THAT HE CAN.
I BELIEVE I'M OUT OF TIME, THANK YOU VERY MUCH.
>> THANK YOU FOR YOUR ARGUMENTS TODAY.
WITH THAT THIS COURT IS ADJOURNED