

IN WHICH ISSUE IS DO THEY HAVE A
CAUSE OF ACTION FOR FAILING TO
KEEP IT IN TWO SEPARATE
ACCOUNTS?

>> OKAY SO WE DON'T KNOW WHETHER
IT WAS --

EVEN NOW IT CAN BE ONE BIG
ACCOUNT BUT AS LONG AS THERE ARE
SEPARATE SHEETS KIND OF LIKE A
TRUST ACCOUNT THAT'S OKAY EVEN
WITH LOTS OF BUYERS OR --

>> THAT'S MY UNDERSTANDING AND I
THINK IT'S THE POSITION AS THE
FDLE'S AS WELL THAT FOR EXAMPLE
IF YOU HAVE 250 UNITS THAT YOU
DON'T NEED 500 ACCOUNTS.

>> ALL RIGHT SO NOW MY QUESTION
IS, THIS WAS SEGREGATED BUT ALL
IN ONE ACCOUNT, WHY IS IT AND
THIS IS A FRIENDLY QUESTION, WHY
IS IT THAT THE REMEDY IS THE
AVOIDING OF THE CONTRACT AND THE
RETURN OF THE ENTIRE AMOUNT?

WHY WOULDN'T IT BE THAT THERE IS SOME QUESTION AS TO IF THERE WAS NO HARM THAT IT WOULD BE EITHER THE EXCESS AMOUNT, OR IS IT THE STATUTE SAID IN THE REMEDY?

>> SUBSECTION 5 OF THE STATUTE SAYS THAT FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION RENDERS THE CONTRACT VOIDABLE BY THE BUYER AND IF VOIDED ALL SUMS DEPOSITED OR ADVANCED UNDER THE CONTRACT SHALL BE REFUNDED WITH INTEREST AT THE HIGHEST RATE THAN BEING PAID ON SAVINGS ACCOUNT BLAH, BLAH, BLAH.

>> SO THE LEGISLATURE SETS THE REMEDIES.

>> WHAT WE ARE DISCUSSING IS RELATIVE TO THE INTERPRETATION OF THE STATUTE AND MY ISSUE BECAUSE ONE THING THE COURT HAS TO CONSIDER IS DID THE LEGISLATURE REALLY INTEND THAT

SIMPLY BY KEEPING IT IN ONE
ACCOUNT INSTEAD OF TWO AND BY
THE WAY THAT MAY BE A MISTAKE
THAT THE ESCROW AGENT MAKES NOT
THAT THE DEVELOPER MAKES BUT
SIMPLY BECAUSE THAT WAS DONE NOW
THE BUYER IS ENTITLED TO AVOID
THE ENTIRE CONTRACT AND THE
LEGISLATURE FOR THEIR INTENDED
THAT IT WAS A FELONY, SO NOW THE
DEVELOPER CAN GO TO THE PRISON
FOR FIVE YEARS BECAUSE INSTEAD
OF KEEPING IT INTO ACCOUNTS HE
KEPT IT IN ONE.

>> SO WHAT DOES THE LEGISLATURE
MEAN AND WHAT DO YOU THINK THE
LEGISLATURE MEANT IN THE ONE
SECTION WHERE THEY TALK ABOUT
THE SPECIAL ESCROW ACCOUNT AND
THE NEXT SECTION THEY TALK ABOUT
THE EXCESS OVER THE 10%.
THEY CALL IT A SPECIAL ESCROW
ACCOUNT.

I BELIEVE THE DEVELOPER CAN GET TO 10%.

THE DEVELOPER CANNOT GET TO THE EXCESS OF THE 10% UNTIL THE ACTUAL CLOSING.

>> REVERSE.

>> REVERSE, OKAY.

SO WHY NOT --

WHY ISN'T THAT AN INDICATION THEY INTENDED THAT THERE WOULD BE TWO SEPARATE ACCOUNTS?

>> BECAUSE THERE IS NO FURTHER PROTECTION OFFERED TO THE BUYERS FROM KEEPING TO ACCOUNTS INSTEAD OF ONE.

UNDER THE CHANGES THAT HAVE BEEN MADE SINCE 1974 ALL THE WAY TO NOW, WE HAVE REALLY TWO IMPORTANT PROTECTIONS THAT HAVE BEEN ADDED FOR BUYERS.

NUMBER ONE, THE FUNDS HAVE TO BE PLACED IN AN ESCROW ACCOUNT.

THAT WASN'T TRUE AT THE

BEGINNING OF THE STATUTE AND
NUMBER TWO THE CHANGES THAT
OCCURRED IN 1984 HAVE TO BE KEPT
BY INDEPENDENT ESCROW AGENTS.
AT THE BEGINNING WHEN ESCROW
ACCOUNTS WERE REQUIRED IN 74 AND
THEN IN 76 AS WELL IT WAS THE
DEVELOPER THAT COULD KEEP THE
ESCROW ACCOUNTS ANNOUNCE AN
INDEPENDENT ESCROW AGENT.

>> BUT WHAT HAPPENED IN 2010?
ISN'T THAT AN INDICATION THAT AT
LEAST THE LEGISLATURE BELIEVED
THAT THE TWO ACCOUNTS WERE
NECESSARY AND THEY USE THE
LANGUAGE THAT THEY USED IN THE
2007 AMENDMENT?

>> THE 2010 AMENDMENT, THE
LEGISLATURE WAS SETTING
CLARIFICATION OF THE LAW THAT IT
HAD ALWAYS INTENDED.

>> OKAY, EVERY ARGUMENT --
THE IDEA THAT YOU WOULD HAVE A

LEGISLATURE IN 2010, WHICH IS A
VERY DIFFERENT LEGISLATURE THEN
THE LEGISLATURE IN 1984 CAN SAY
WE REALLY MEANT THAT, WOULD
ALLOW THE LEGISLATURE TO DECIDE
INTENT RETROACTIVELY.

I MEAN, JUST AS A PRINCIPLE, AS
A PRINCIPLE ABOUT WHAT THEY
MIGHT HAVE INTENDED, IS NOT MORE
IMPORTANT BECAUSE I KNOW YOU AS
A JUSTICE WERE A BIG FAN OF
BEING A TEXTUALIST.

>> BUT MOSTLY --

[INAUDIBLE]

[LAUGHTER]

>> BUT WHAT IS IT THAT --

[LAUGHTER]

>> WELL TAKEN.

SECTION 1 UP TO 1984 SAID THE
ESCROW FUNDS MAY BE DEPOSITED IN
SEPARATE ACCOUNTS OR IN COMMON
ESCROW OR TRUST ACCOUNTS OR
MINGLED WITH OTHER ESCROW OR

TRUST ACCOUNTS HANDLED BY THE
ESCROW AGENTS.

IN OTHER WORDS, IT GAVE CHOICES.

THAT PART WAS EXCISED IN 1984.

INSTEAD, IT NOW SAYS IN 2010 IN
A SPECIAL ACCOUNT.

I JUDGE FROM PLAIN MEANING OF --
IT DIDN'T SAY SPECIAL

ACCOUNTING, THAT AN ACCOUNT THAT

I GUESS EVERYONE IN THE THIRD

DISTRICT BUT IN COMMON USAGE

MEANS A SEPARATE ACCOUNT, NOT

SEPARATE ACCOUNTING AND I GUESS

OF ALL THE THINGS AS FAR AS THE

LEGISLATIVE HISTORY, AND I WOULD

AGREE WITH YOU THAT THE IDEA

THAT WHEN THE DEVELOPER HAD ITS,

SOME OF THAT, IT WOULD NEED

DIFFERENT PROTECTIONS IN THE

ESCROW AGENT SO I'M NOT

NECESSARILY SAYING THAT I THINK

THIS ALL MAKES SENSE.

THE LEGISLATURE DOESN'T ALWAYS

MAKE SENSE BUT IT DOES SEEM THAT
THE PLAIN LANGUAGE OF GIVING THE
MEANING TO SUBSECTION THREE IS A
SPECIAL ACCOUNT AND THE
INDICATION IS THAT THEY HAD HAD
SEPARATE ACCOUNTING BEFORE AND
THEY TOOK THAT.

>> LET ME EXPLAIN THAT.

WE HAVE TO DETERMINE WHAT A
SPECIAL ACCOUNT WOULD MEAN AND
UNDER THE APPELLEES ON
DEFINITION OF SPECIAL ACCOUNT IS
THE WAY IT IS DEFINED IN A
BAKING SENSE AS AN ESCROW
ACCOUNT.

IT'S AN ACCOUNT HELD IN TRUST.
IS SEPARATE FROM THE GENERAL
ACCOUNT AND NOT AVAILABLE TO THE
BANK TO USE AS THEY CHOOSE LIKE
A GENERAL ACCOUNT IS WHERE IT'S
REALLY A LOAN FROM THE DEPOSITED
TO THE BANK.

A SPECIAL ACCOUNT IS DIFFERENT

AND IT'S HELD IN TRUST FOR THE
DEPOSITORS SO TO ME THAT
INTRODUCES AT THE VERY LEAST AN
AMBIGUITY INTO THE STATUTE WHEN
YOU SAY SPECIAL ESCROW ACCOUNT.

>> OKAY I GOT THAT BUT WHAT
ABOUT THE IDEA THE FACT THAT
THEY TOOK OUT THE LANGUAGE THAT
IT SEEMS TO ME THAT WAS ADDED
BACK IN 2010?

>> THEY SAID BECAUSE THEY DIDN'T
NEED IT.

THEY FIGURED THEY DIDN'T NEED
IT.

ESCROW ACCOUNT AND ESCROW
ACCOUNT AND THEY HAVE THE WORDS
THEY INSERTED IN THAT SECTION,
SPECIAL ACCOUNT SHALL BE HELD IN
A SPECIAL ESCROW ACCOUNT
ESTABLISHED AS PROVIDED IN
SUBSECTION ONE AND CONTROLLED BY
AN ESCROW AGENT.

>> RIGHT, AND THE PROBLEM IS

THAT THEY TOOK OUT THE LANGUAGE,
THE ESCROW FUNDS BE DEPOSITED IN
SEPARATE ACCOUNTS OR IN COMMON
ESCROW OR TRUST ACCOUNTS.

IF THEY HAD KEPT THAT IN WE
WOULDN'T BE HERE SO THEY TOOK
OUT -- WE HAVE TO BELIEVE THAT
TAKING OUT SOMETHING THAT HAS
BEEN IN WAS DONE WITH SOME
MEANING.

>> BUT AT THE SAME TIME THEY
INSERTED AS PROVIDED IN
SUBSECTION ONE AND CONTROLLED BY
AN ESCROW AGENT WHICH MEANS
THERE WERE SAYING THE SAME THING
IN FEWER WORDS.

YOU CAN PUT IT ALL TOGETHER.
AT THE LEAST IT INTRODUCES AN
AMBIGUITY AND THEREFORE YOU HAVE
TO GO TO THE CLARIFICATION OF
THE STATUTE AND I KNOW THAT
JUSTICE DOESN'T AGREE WITH THAT
AT THIS COURT IN LOWERY DID THE

SAME EXACT THING WHERE THE
STATUTE WAS CLARIFIED MANY YEARS
AFTER THE ORIGINAL STATUTE WAS
ENACTED BUT ONLY FOUR MONTHS
AFTER THE ATTORNEY GENERAL
ISSUED AN OPINION CONTRARY TO
THE ISSUE.

>> WHEN WAS THE STATUTE BEING
INTERPRETED?

WHEN WAS THAT ENACTED?

>> 84.

>> HOW POSSIBLY AND SOME OF THE
PEOPLE IN THE LEGISLATURE
WEREN'T EVEN BORN YET.

HOW COULD THEY POSSIBLY SAY THAT
IS WHAT WE INTENDED?

>> I BELIEVE THAT THE COURTS LAW
DID NOT REQUIRE THIS.

THIS COURT IN LOWERY SAID IF YOU
DO IT SOON AFTER THE
CONTROVERSIAL INTERPRETATION OF
ROSE, THAT'S OKAY TOO.

EVEN IF YOU DON'T SAY WELCOME

THIS APPLIES RETROACTIVELY EVEN
THOUGH IT'S 10 YEARS, THE COURTS
HAVE SAID AT LEAST WE ARE GOING
TO GIVE IT DEFERENCE AND
CONSIDER WHAT THE LEGISLATURE
DID.

>> BUT THAT'S A DIFFERENT ISSUE.
THEY WEREN'T ACTUALLY SAYING
THIS WILL APPLY RETROACTIVELY.
YOU ARE SAYING WE ARE ASKING YOU
TO TAKE INTO ACCOUNT THAT THIS
IS WHAT WE THINK WE INTENDED AND
I GUESS I'M NOT WEIGH, WE CAN
CONSIDER WHAT THEY SAID AND WHY
THEY SAID IT JUST LIKE YOU WOULD
ARGUE THAT WE WOULD TAKE INTO
ACCOUNT WHAT SOME FORMAL
ADVISORY OPINION WHO RELIED ON
HEARSAY, SAY IN 1999.

>> THAT'S ANOTHER ISSUE.

>> WHICH IS ANOTHER WAY WE ARE
TRYING TO INTERPRET THE
CONTRACT.

>> YES, AND YOU GIVE DEFERENCE
TO THE INTERPRETATION OF THE
AGENCY.

NOW THE APPELLEE SAYS WE
SHOULDN'T GIVE US ANY DIFFERENCE
AND I THINK REALLY WHAT HAPPENS
IS YOU GIVE GREATER DEFERENCE TO
FORMAL OPINIONS AND LESSER
DEFERENCE TO OPINIONS BUT YOU
STILL GIVE DEFERENCE TO IT.

>> DO WE HAVE ANYTHING IN THE
RECORDS AND I GUESS NOT BECAUSE
YOU SAID --

IS THE IDEA THAT DEVELOPERS AND
ESCROW AGENTS FOR THE ENTIRE
WHATEVER NUMBER --

26 YEARS, UNDERSTOOD THIS TO
MEAN THAT THEY COULD HAVE
SEPARATE ACCOUNTING LIKE A TRUST
ACCOUNT WITH A TRUST ACCOUNT
WITH A SEPARATE LEDGER THAT
ALONE WAS THE WAY EVERYBODY
INTERPRETED IT OR DOES THAT

MATTER AT ALL?

>> I THINK TO BE HONEST,
PROBABLY THE MORE ACCURATE WAY
TO SAY IT IS SOME PEOPLE DID AT
ONE WAY AND SOME PEOPLE DID IT
THE OTHER AND SOME, THEY JUST
GAVE IT TO AN ESCROW AGENT AND
IT WAS UP TO THE ESCROW AGENT.

>> BUT THE ESCROW RAGE AND, THE
MOST THEY WOULD HAVE HAD TO DO
WAS HAVE ONE FOR ALTHOUGH BUYERS
THAT HAD UP TO 10% AND THEN
ANOTHER FOR ALTHOUGH BUYERS THAT
HAD OVER 10%.

>> RIGHT.

>> CORRECT?

>> THAT WOULD BE THE MOST.

>> IN TERMS OF PROTECTION IN
HARM'S THERE IS A STATEMENT IN
THEIR BRIEF ABOUT ALL THE WAYS
THAT HAVING THEM CO-MINGLE COULD
HARM A BUYER, BANKRUPTCY
IMPLICATIONS AND SO FORTH AND

MOST OF THESE CASES ACTUALLY
CAME OUT OF THE FEDERAL COURT.
MY CONCERN IS, WHEN YOU SAY IT
DOESN'T REALLY MAKE A DIFFERENCE
TO THE BUYERS, DOES IT OR
DOESN'T IT?

>> IT DOESN'T MAKE A DIFFERENCE
IF --

AND THE CASE SAID THEY AFFIRMED
IT AND THEY SAID YOU DIDN'T EVEN
KEEP SEPARATE ACCOUNTING BUT IF
IN AN ESCROW ACCOUNT AND IF IT'S
THE THEN INDEPENDENT ESCROW
AGENT, THAT COVERS EVERY CONCERN
YOU COULD POSSIBLY HAVE ABOUT
THESE ACCOUNTS AND IN FACT IN
THE EMERY VIKING CASE WHICH THEY
CITE, THE BANKRUPTCY CASE, IN
THAT CASE THE COURT SAYS THE
FUNDS BELONG TO THE DEPOSITOR
WHICH WAS BETTER AND THEREFORE
COULD BE USED BY THE TRUSTEE
BECAUSE THE FUNDS WEREN'T PLACED

INTO ANY ESCROW ACCOUNTS OF
THEIR THE DIFFERENCE WAS BETWEEN
HAVING ONE ACCOUNT INTO ESCROW
ACCOUNTS WAS BETWEEN HAVING NO
ESCROW ACCOUNT AT ALL AND HAVING
AN ESCROW ACCOUNT.

HAD THOSE FUNDS BEEN PLACED IN
THE ESCROW ACCOUNT THE TRUSTEE
WOULD HAVE WOULD HAVE BEEN ABLE
TO REACH THAT MONEY.

>> LET ME ASK YOU THIS BEFORE
YOU GET TO YOUR REBUTTAL TIME.
WHAT IS THE BASIS OF HIS
JURISDICTION HERE?

>> THE JURISDICTION IS THAT THE
COURT PARTIALLY INVALIDATED THE
STATUTE.

>> THEY PARTIALLY INVALIDATED IT
MEANING WHAT?

>> NOW I KNOW HOW THEY FEEL .
THE 2000 CLARIFICATION OF THE
STATUTE.

THEY SAID WERE NOT GOING TO

APPLY THAT RETROACTIVELY.

>> WHY DID THEY INVALIDATE?

DID THEY INVALIDATE BECAUSE THEY
DID NOT WORK RETROACTIVE?

>> THIS DOESN'T --

>> THEY SAID TO APPLY

RETROACTIVELY WOULD BE A
VIOLATION OF THE CONSTITUTION
WHICH IS INVALIDATING THAT PART
OF THE STATUTE.

THEY SEND IT TO THE EXERCISE OF
JURISDICTION.

>> IN THE THIRD DCA CASE THEY
SAID THAT TO APPLY RETROACTIVELY
WOULD VIOLATE THE CONSTITUTION.
THAT IS A PARTIAL INVALIDATION.

>> I ALSO WANT TO EMPHASIZE THAT
NEITHER AA OR ANY OTHER CASE
CONSIDERED THE CRIMINAL
RAMIFICATIONS OF THE STATUTE AND
RULE OF LIMINE.

>> AT THE OPPOSING COUNSEL SAYS
THAT WAS NEVER RAISED BEFORE.

IS THAT A PROBLEM?

>> I DON'T THINK IT'S A PROBLEM
BECAUSE ITS CONSTRUCTION OF THE
STATUTE IN THIS COURT HAS TO
APPLY THE LAW OF LIMINE.

IT'S NOT LIKE IT'S SOMETHING
THAT HAS TO BE PRESERVED BELOW.
IT'S ANOTHER ARGUMENT IN
INTERPRETATION OF THE SAME
STATUTE.

>> YOU ARE CORRECT THAT IT
WASN'T ARGUED BEFORE BY THE WAY
BUT I DON'T THINK THAT MATTERS.

>> IF YOU WOULDN'T MIND STARTING
OFF BY ADDRESSING THE RULE OF
LIMINE AND I UNDERSTAND YOU HAVE
GOT TO GET TO THE POINT WHERE
REALLY CONSIDER AND WE WOULD
CONCLUDE THAT THE STATUTE IS
AMBIGUOUS BUT IF WE CONCLUDE
THAT THE STATUTE IS AMBIGUOUS,
WHY DOESN'T THE RULE OF LIMINE
RESOLVE THIS IN FAVOR OF THE

OTHER SIDE?

>> WE TAKE A DOGMATIC POSITION
WITH THE RULE OF LIMINE YOUR
HONOR.

IT APPLIES TO CRIMINAL CASES ARE
NOT TOO CIVIL CASES.

THIS IS A CRIMINAL SUBSECTION
AND 718.202.

NEITHER ONE OF US IN THE STATE
ATTORNEY'S OFFICE --

>> BUT YOU CAN'T HAVE THE
STATUTE THAT THIS WOULD ALLOW
THEM TO BE PROSECUTED.

CAN YOU HAVE TWO DIFFERENT
INTERPRETATIONS OF THE SAME
STATUTE DEPENDING ON WHETHER
THEY ARE GOING TO BE CRIMINALLY
PROSECUTED OR YOU JUST HAVE TO
GIVE BACK THE ENTIRE AMOUNT?

AND I MEAN I DON'T KNOW.

>> THE U.S. SUPREME COURT
DISAGREES WITH YOU ON THAT
POINT, WHAT YOU ACKNOWLEDGE.

>> MAYBE THEY WILL.

THAT'S NOT THE FIRST TIME THAT
IS HAPPEN.

>> WE UNDERSTAND THAT AT THIS
COURT MAY DISAGREE WITH THEM
TOO.

I HAVE NOTICED THAT TOO BUT
SERIOUSLY, THE QUESTION HOW WE
CAN INTERPRET THE STATUTE IN ONE
CONTEXT IS HAVING A PARTICULAR
MEANING AND IMPOSING PARTICULAR
REQUIREMENTS FOR CIVIL PURPOSES
AND THEN SAY, OH WE ARE GOING TO
TREATED DIFFERENTLY AND WE ARE
INTERPRETING THOSE REQUIREMENTS
AND ARE CRIMINAL LAW, THAT SEEMS
TO BE PROBLEMATIC.

AS THE U.S. SUPREME COURT HAS
SAID ON MORE THAN ONE OCCASION.

>> ON OUR IT'S A REMEDY
FASHIONED BY THE LEGISLATURE
DESIGNED AND AFFECTED THE A
PENALTY ON A DEVELOPER AND THAT

IS WAS 7.8.202 IS ABOUT.

>> AND IT TALKS ABOUT THIS

MATTER WHICH IT IS A DRACONIAN

REMEDY WITH BOTH CIVIL AND

CRIMINAL RAMIFICATIONS.

EXPLAIN HOW IF THIS IS ANALOGOUS

TO AN ESCROW ACCOUNT IS

ANALOGOUS TO A TRUST ACCOUNT,

HOW, IF IT'S REALLY ACCOUNTED

FOR IN AN ESCROW ACCOUNT HOW IT

COULD MATTER WHETHER IT'S IN TWO

SEPARATE ACCOUNTS PROPERLY

ACCOUNTED OR ONE ACCOUNT

PROPERLY ACCOUNTED?

YOU NO, AS FAR AS IF WE ARE

TRYING TO DO WITH THE

LEGISLATURE WOULD HAVE INTENDED,

I THINK IT'S VERY DIFFERENT AT

THE DEVELOPER WAS HOLDING IT BUT

ONCE IT IS SWITCHED TO THE

ESCROW AGENT, WHERE IT'S

BASICALLY HOLDING THESE FUNDS IN

TRUST, I'M JUST HAVING TROUBLE

UNDERSTANDING THE PUBLIC POLICY
CONSIDERATION FOR THIS DRACONIAN
REMEDY OF CRIMINAL PENALTIES AND
RETURN OF THE ENTIRE DEPOSIT.

>> WITH RESPECT TO THE CRIMINAL
PENALTIES, I AM AWARE OF ONLY
ONE PROSECUTION.

IT ENDED IN REVERSAL .

>> OF BUT THE SAME STATUTE
GOVERNS FOLKS SO WE ARE TALKING
ABOUT --

>> I'M SORRY YOUR HONOR AND I
HATE TO INTERRUPT YOUR HONOR BUT
THAT'S NOT QUITE THE CASE .

THE LOOK OF THE CRIMINAL PENALTY
IT REQUIRES A WILLFUL SALE TO
GET A CRIMINAL PENALTY .

>> BUT YOU HAVE TO DETERMINE
WHETHER THERE WAS FAILURE TO
COMPLY .

YOU HAVE TO DETERMINE WHETHER
THERE WAS A FAILURE TO COMPLY ON
THE PURPOSES OF AVOIDING OF THE

CONTRACT.

>> CERTAINLY IGNORANCE OF THE
LAW IS NOT AN EXCUSE.

IF YOU SAY I DIDN'T THINK THE
STATUTE MEANT THAT, THAT'S NOT
GOING TO BE WILLFUL BUT THE
QUESTION GOES BACK TO --

EXPLAINED TO ME THE DIFFERENCE
AS FAR AS, AND THERE MAY BE A
VERY VALID DIFFERENCE SO I'M
ASKING THIS IS NOT
UNDERSTANDING --

BETWEEN WITH THE -- WITH THE
ESCROW AGENT HAVING THESE FUNDS
AND ACCOUNTING DONE PROPERLY
WHETHER IT MATTERS THAT ALL THE
BUYERS THAT HAVE THE 10% ARE
UNDER OUR IN ONE ACCOUNTS BUT
SEPARATE ACCOUNTING AND THOSE
THAT HAVE OVER 10% IN ANOTHER
ACCOUNT VERSUS EVERYBODY GETTING
THEIR OWN LEDGER SHEETS THE WAY
WE ALLOW LAWYERS TO HANDLE TRUST

ACCOUNTS.

>> ASSUMING THAT EVERYONE IS ACTING FAITHFULLY, THAT THERE ARE NO MISAPPROPRIATIONS AND THERE IS NO EMBEZZLEMENT, YOU ARE PROBABLY CORRECT YOUR HONOR AND SAYING IN THE END RESULT EVERYTHING GOES PERFECTLY AND THE BUILDER COMPLETE THE PROJECT AND THERE IS NO FORECLOSURE BY THE LENDER WHICH HAPPENS IN FLORIDA THESE DAYS THAN IT PROBABLY DOESN'T MAKE ANY DIFFERENCE TO A BUYER AS TO HOW THE FUNDS WERE KEPT IN THAT ACCOUNT IF THEY WERE SEPARATELY ACCOUNTED FOR.

>> BUT THE DEVELOPER THOUGH AS THEY ARE GOING UNDER THEY DON'T HAVE THE RIGHT, IF THEY TAKE THAT FIRST 10% OF EVERYBODY'S DEPOSIT, NOW YOU HAVE A WHOLE OTHER ISSUE.

>> I HAVE A CASE RIGHT NOW
BLEEDING IN THE CIRCUIT COURT.
>> BUT THAT'S NOT GOING TO OCCUR
BECAUSE THERE ARE THESE SEPARATE
ESCROW ACCOUNTS.
THAT'S GOING TO OCCUR FROM OTHER
WRONGDOING ON THE DEVELOPER
GETTING FUNDS THAT THEY WEREN'T
ENTITLED TO GET.
>> YOUR HONOR I UNDERSTAND YOUR
HONOR'S CONCERN FOR THE QUESTION
WE HAVE HERE IS UP UNTIL 2010 WE
HAD 2009 WITH THE RULE IN THE
DISTRICT COURT AND THEN WE HAVE
BY AMENDMENT.
I WAS THE ONE THAT BROUGHT THIS
CASE IN THE CIRCUIT COURT AND WE
BROUGHT IN THE THIRD COUNT THAT
ALLEGED A VIOLATION OF THIS
ACCOUNT RULED.
UP UNTIL THAT TIME THERE WAS ONE
PUBLISHED OPINION FROM A WELL
MOANED COURT BY BANKRUPTCY

REPORTER WHICH WAS THE EMERY
VIKING CASE WHICH SAID EXACTLY
WHAT WAS EXPECTED OF DEVELOPERS
COMPLAIN WAS NOT A MYSTERY.

>> ON THAT VIKING CASE WHICH OF
COURSE WOULD BE A FEDERAL CASE
IS MR. CANTERO CORRECT THAT
THERE WAS NO ESCROW ACCOUNT IN
THAT CASE?

>> THERE WAS AN ACCOUNT OF THE
DEVELOPER ABUSED IT.

THE INITIAL RESULT WAS --
SEE IT WASN'T HELD BY AN
INDEPENDENT ESCROW AGENT?

>> NO, IT WASN'T.

>> HOW IS THAT REMOTELY THE
SAME --

WHAT WE ARE TALKING ABOUT HERE
IS WHETHER THERE WAS A SEPARATE
NUMBERED ACCOUNT VERSUS A
SEPARATE ACCOUNT IN.

YOUR BEST ARGUMENT IS THAT THE
POLICY ARGUMENT IS THE LANGUAGE

OF THE STATUTE?

>> THAT IS WHAT THE JUDGE SAID
INTO SENTENCES AND IF I MAY HAVE
PERMISSION TO READ THE TWO
SENTENCES THAT ANSWERS THE
QUESTION.

HE SAID IN VIKING THE STATUTE
REQUIRES THE DEVELOPER TO
ESTABLISH ONE ESCROW ACCOUNT
CONTROLLED BY AN ESCROW AGENT
FOR DOWN PAYMENTS OF UP TO 10%
OF THE SALE PRICE RECEIVED BY
THE DEVELOPER FROM THE TIMESHARE
AND ONE ESCROW ACCOUNT LIKEWISE
CONTROLLED BY AN ESCALATION FOR
PAYMENTS RECEIVED IN EXCESS OF
10% OF THE SALE PRICE PRIOR TO
CLOSING.

IT WAS THERE IN 1989.

THAT WAS FIVE YEARS AFTER THAT
STATUTE WAS ENACTED.

THAT WAS PUBLIC KNOWLEDGE.

EVERY DEVELOPER IN THE STATE WAS

WELL AWARE OF WHAT THE STATUTE
REQUIRED IN THE COURT SO HELD
ITS PUBLISHED OPINION.

ANYBODY WHO WOULD PRESS THE
BUTTON AND ELECTIONS WOULD HAVE
FOUNDED IN 15 SECONDS.

TO SAY THAT THIS WAS SOMETHING
THAT WAS HIDDEN THAT SOMEBODY
DIDN'T KNOW ABOUT IS BEYOND
BELIEF.

>> I GUESS WHAT I'M HAVING
TROUBLE WITH IS THAT JUDGE MADE
A MISTAKE BECAUSE THE ISSUE WAS
THAT IT WAS --

[INAUDIBLE]

ONE JUDGE SAYS I AM READING THIS
STATUTE AND IT REQUIRES AN
ESCROW ACCOUNT AND THEN THEY ARE
SAYING UNDER 10% AND ANY OTHER
ABOVE.

WHAT WE GO BACK TO THOUGH IS
LOOKED LOOK AT THE STATUTORY
CONSTRUCTION ABOUT WHY THIS IS

THE THIRD DISTRICT'S
INTERPRETATION, WHY THE STATUTE
ACTUALLY BY SAYING ACCOUNT,
SPECIAL ESCROW ACCOUNT MEANT A
SEPARATE BANK ACCOUNT, NOT
SEPARATE ACCOUNT.

IS THAT YOUR STRONGEST ARGUMENT
FRANKLY THAT THE STATUTORY IS
THE ARGUMENT?

>> ISN'T THAT OUR JOB HERE, ALL
OF US WHO ARE HERE?

OUR JOB IS TO SEE WHAT THE
LEGISLATURE INTENDS.

>> BUT ALSO WE CAN DO IT UNDER A
VACUUM WITHOUT UNDERSTANDING A
POLICY.

THE ISSUES OF BANKRUPTCY AND ALL
THIS AND I'M TRYING TO
UNDERSTAND IF THERE WOULD BE A
REAL REASON THAT IT HELPS YOU TO
FURTHER APPRECIATE THE
LEGISLATIVE CONCERN IN BEING
WHAT I THINK IS DRACONIAN OR THE

RETURN OF THE DEPOSIT EVEN IF
THE CONDO HAD BEEN BUILT AND
THEY WERE RELYING ON THOSE FUNDS
BY SOMEBODY THAT IS DISAPPOINTED
OR CHANGED HIS MIND BY THE
BUYER.

IT SEEMS TO ME THERE IS REALLY
NO EQUITY HERE.

>> YOUR HONOR IF HE WOULD TAKE A
LOOK AT THE 2012 DECISION ISSUED
BY THE BANKRUPTCY JUDGE IN
ORLANDO, CHIEF JUDGE CAME OUT
WITH A VERY LENGTHY TO SAY THE
LEAST, 54 PAGES AND CHANNEL IS
EXACTLY THE POLICY REASON WHY
THE LEGISLATURE AND CLOSE THIS
TYPE OF DROP-DEAD PENALTY ON
DEVELOPERS TO MAKE SURE THAT
THEY WOULD COMPLY BECAUSE THE
SLIGHTEST MISTAKE COULD END UP
WITH THOSE FUNDS GETTING INTO
THE HANDS OF THE TRUSTEE OF
BANKRUPTCY FOR THE DEVELOPER WHO

WAS FORECLOSED ON.

>> EXPLAIN, HOW IS IT THAT IF

IT'S NOT KEPT --

IF IT'S PROPERLY ACCOUNTED FOR,

THE TWO BANK ACCOUNTS VERSUS

ONE, HOW DOES THE TRUSTEE OF

BANKRUPTCY GET TO THOSE FUNDS?

>> THE FACT THAT THE LEGISLATURE

CHOSE TO ACCOUNTS --

>> NO, I'M ASKING YOU HOW IF

THEY WENT THROUGH AT?

>> IF THERE WERE ANY ESCROW

ACCOUNTS THE TRUSTEE COULD NOT

GET TO THOSE FUNDS.

>> WELL THERE'S THE ANSWER ON

THAT ONE.

SEE WHAT I WAS GETTING AT WAS

THE OTHER SIDE OF THE ARGUMENT.

>> THERE A SERIES OF VERY

CLEARLY STATED RULES OF THE

DEVELOPER MUST COMPLY WITH IN

ORDER TO AVOID THE DRACONIAN

AMENDMENT OF 202.7185.

ALL THEY HAVE TO DO IS COMPLY
WITH THE CLEAR UNAMBIGUOUS
PROVISIONS INDEPENDENT ESCROW
AGENT PROPERLY INVESTING IN
FUNDS COULD NOT CO-MINGLE.

THAT'S ALL YOU HAVE TO DO IN
YOUR PROTECTED.

TO MAKE SURE THESE PROJECTS
GOING TO DISTRESS YOU WILL NOT
HAVE A SITUATION IN EITHER CASE
WHERE THAT HAPPENED WHERE THE
MONEY WAS TAPPED OUT AND WHEN IT
WENT INTO FORECLOSURE --

[INAUDIBLE]

AND WE HAVE A CASE OF THE IDEAS
TO MAKE SURE IT DOESN'T HAPPEN
AND IF IT WAS A LITTLE BIT OF
IRON PLATED OR OVER IRONED THAT
IS THE LEGISLATURE'S DECISION.
IT'S OUR JOB I BELIEVE AND I
BELIEVE IT'S THIS COURT'S
RESPONSIBILITY TO ENFORCE WITH
THE LEGISLATURE REQUIRED.

IT'S JUST THAT HERE IS WHAT
GORILLAS IN ADVANCE.

THE JUDGMENT IN 1989 A SIMPLE
ASSEMBLE ALL THE IS GREAT IN IT
TO DO IS TAKE THIS PROJECT AND
SET UP ONE ACCOUNT WITH 10% IN
ONE ACCOUNT WITH ACCESS TEMPERS
IN AND DIVIDE THE MONEY UP AN
ACCOUNT FOR IT.

PUT SEPARATE ACCOUNTS IN A BANK.

>> YOU HAVE EXTENDED YOUR TIME.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT.

[LAUGHTER]

THANK YOU.

MY NAME IS JOSEPH ALTSCHUL AND

I'M HERE TO TALK ON THE

CONSTITUTIONAL ISSUE.

I KNOW THE COURT IS WRITTEN IN
BRIEF SO I'M NOT GOING TO REPEAT
IT BUT I WOULD LIKE TO AT LEAST
IF THE COURT WILL LET ME ADDRESS
A COUPLE OF ISSUES THAT THE

COURT IS RAISED UP TO THIS POINT, ONE BEING WITH THE RULE OF LIMINE I KNOW THERE HAS BEEN DISCUSSION ABOUT CRIMINAL ENFORCEMENT.

THE BARACK CASE I UNDERSTANDING WAS A CRIMINAL CASE AND THAT WAS FROM 1985.

THAT WAS THE CASE THAT DISCUSSES ESTABLISHING ESCROW ACCOUNTS IN THE PLURAL.

AS THERE WAS NO MENTION OF THE RULE OF LIMINE IN THAT CASE AND THAT WAS A REVERSAL OF A PROSECUTION.

IN THAT CASE THEY SAID THE STATUTE WAS CLEAR AND UNAMBIGUOUS SO I DON'T THINK WE ARE HERE ON --

>> WE THINK THE STATUTE IS CLEAR AND UNAMBIGUOUS?

>> I DON'T BELIEVE IT'S STATUTORY CONSTRUCTION.

I BELIEVE IT'S CLEAR AND UNAMBIGUOUS AND I THINK THAT'S UNDERSTOOD AND IF YOU ACTUALLY GO TO, EVEN AFTER THE VIKING OPINION THAT SETS TO SEPARATE ACCOUNTS COMPANY EVEN AFTER THE REFERENCE IN A COUNT TO BARACK IF YOU GO TO WHAT HAS BEEN REFERRED TO AS THE INFORMAL LEGAL OPINION FROM THE ACCOUNT OF THE ATTORNEY AT DDPR, EVEN AND THEY'RE THE LAWYER READS IT AND CONCLUDES THE READING OF THE STATUTE WOULD REQUIRE TWO SEPARATE ACCOUNTS.

THAT LAWYER THEN OPINES THAT ALTERNATIVELY WE CAN FIND COMPLIANCE WITH THE STATUTE BY ESSENTIALLY REDEFINING THE WORD ACCOUNT AND ACCOUNTING AND INSTEAD OF TALKING ABOUT BANK ACCOUNTS, NOW A SEPARATE ACCOUNT, NOW WE ARE TALKING

ABOUT SEPARATE ACCOUNTINGS SO
EACH ONE OF SEPARATE LEDGER
CARD.

>> BUT ISN'T THAT REALLY AGAIN A
LAWYER TRUST ACCOUNT?

WOULDN'T THAT ALLOW ONE TRUST
ACCOUNT WITH SEPARATE LEDGER
SHEETS?

>> SURE.

>> ISN'T THAT THE PROTECTION
AGAINST, AND I'M STRUGGLING WITH
THE PLAIN LANGUAGE ISSUE.

BUT CLEARLY THE ISSUE WAS THAT
THE AMOUNT UP TO 10% HAD TO BE
REALLY PROTECTED, COMPLETELY
PROTECTED WHEREAS THE AMOUNT
OVER 10% COULD BE USED IF THE
CONTRACT REQUIRED IT FOR
CONSTRUCTION.

IT WOULD HAVE TO BE A SEPARATE
ACCOUNTING, BUT HOW IS IT AND
AGAIN MAYBE BY USING IF THEY
HAVE REFERENCED THAT THE

DEVELOPER SHALL PAY INTO AN
ESCROW ACCOUNT ALL PAYMENTS UP
TO 10%.

THEY HAVE USE ALREADY ESCROW
ACCOUNTS, CORRECT?

>> CORRECT.

>> SO NOW WE GET TO THE FIRST
TIME THE SPECIAL ESCROW ACCOUNT
IS USED IS IN SUBSECTION TWO BUT
IT SAYS SHALL BE HELD IN A
SEPARATE ESCROW ACCOUNT
ESTABLISHED AS PROVIDED IN
SUBSECTION ONE.

WELL THAT JUST SAYS NOW THEY
HAVE USE THE WORD SPECIAL ESCROW
ACCOUNT, AND THEN IN THREE IT
SAYS AND MAY WITHDRAW FUNDS IN
EXCESS OF 10% FROM A THE SPECIAL
ACCOUNT REQUIRED BY SUBSECTION 2.
IN NO PLACE DOES IT SAY -- AND
THIS IS A SEPARATE ACCOUNT -- IT
SEEMS THAT REALLY SPECIAL IS YOU
KNOW THE ONLY ARGUMENT THERE IS

TO SAY THAT THEY MUST MEAN
SOMETHING DIFFERENT THAN ESCROW
ACCOUNT BECAUSE THEY ARE CALLING
IT A SPECIAL ESCROW ACCOUNT OR
GO BUT THEY CALL IT A SPECIAL
ESCROW ACCOUNT IN SUBSECTION TWO
REFERRING THE AMOUNT UP TO 10%.
I AM NOT GETTING THE CLEAR AND
UNAMBIGUOUS PART OF THE
ARGUMENT.

>> SURE YOUR HONOR.

IN FLORIDA JURISPRUDENCE THERE
IS A DIFFERENCE IN THE BANKING
CONTEXT AND THAT SIGNIFICANT
MEANS IT'S MONEY FOR SPECIFIC
PURPOSE AND THAT MONEY CAN BE
TREATED DIFFERENTLY THAN MONEY
THAT HAS PUT INTO WHAT WOULD BE
CALLED A GENERAL DEPOSIT
ACCOUNT.

>> TELL ME THEN HOW ESCROW --
AND AGAIN I WASN'T A REAL ESTATE
LAWYER BUT IT DOESN'T ESCROW

HAVE -- IN OTHER WORDS CAN A
LAWYER, CAN THEY HOLD MONEY IN
AN ESCROW ACCOUNT AS PART OF
THEIR TRUST ACCOUNT OR DO THEY
SET UP A SEPARATE ACCOUNT?

MAYBE THAT IS BEYOND THE SAME
BUT IT SEEMS TO ME THAT ESCROW
IS THE PART THAT IF YOU HAVE A
FIDUCIARY DUTY, ONCE YOU HAVE
MONEY OWNED IN AN ESCROW ACCOUNT
YOU CAN'T USE IT FOR PURPOSES
OTHER THAN WHAT ITS DESIGNATED
FOR, CAN YOU?

>> LEGALLY YOU CANNOT AND I
WOULD AGREE WITH THE RESPONSE TO
YOUR QUESTION IN THE LAWYER
CONTEXT IT WOULD DEPEND ON WHAT
THE AGREEMENT OF THE LAWYERS WAS
WHETHER YOU HAVE A TRUST ACCOUNT
IN A SEPARATE ESCROW ACCOUNT.
IS A GENERAL PRACTICE MOST
LAWYERS KEEP ON ESCROW ACCOUNT
TO DUMP EVERYBODY'S MONEY TO ONE

ACCOUNT.

>> THIS IS A DISTINCTION THAT IN MOST NORMAL KIND OF TRANSACTIONS MAY HAVE A REAL ESTATE CONTRACT FOR THE PURCHASE OR SALE AND MAY REVERT TO AN ESCROW ACCOUNT AND IT HAS A MORE GENERIC CONNOTATION OF WHAT'S GOING TO BE DONE IN THE CONTEXT OF AN ESCROW ACCOUNT AND IT MAY BE GOVERNED BY THAT SPECIFIC CONTRACT.

BUT THERE ARE GENERIC RULES BUT HERE, WHEN IT REFERS TO A SPECIAL ESCROW ACCOUNT AND REFERENCES THAT TO THE STATUTORY SUBSECTION, ISN'T TALKING ABOUT THE LIMITATIONS AND RESTRICTIONS IMPOSED UPON THAT PARTICULAR ESCROW ACCOUNT ESTABLISHED BY THE STATUTORY -- NOT THE LEGISLATURE.

>> YES YOUR HONOR THAT'S EXACTLY

WHAT IT WAS AND THAT MONEY BY
BEING IN A SPECIAL ACCOUNT IS
LIMITED AND TO A SPECIAL,
SPECIFIC PERSON.

>> I SEE HOW THAT HAS NOTHING TO
DO WITH REQUIRING SOMEHOW TWO
SEPARATE BANK ACCOUNTS.

>> I BELIEVE THE READING OF THE
STATUTE IN COURT REFERS TO A
SPECIAL ESCROW ACCOUNT REFERRING
TO A DIFFERENT ESCROW ACCOUNT.

>> IN CONNECTION WITH THAT LET
ME ASK YOU, DO YOU TAKE THE
POSITION THAT THE ACCOUNT
REQUIRED UNDER SUBSECTION ONE
ARE NOT A SPECIAL ACCOUNT?

>> THE ACCOUNTS UNDER SUBSECTION
ONE ARE NOT SPECIAL ACCOUNTS.
THE ACCOUNTS UNDER SUBSECTION TO
OUR SPECIAL ACCOUNTS.

>> THAT IS HOW THE LEGISLATURE
HAS DISPLAYED THEM.

>> THEY REFER IN SUBSECTION TWO

BACK TO SUBSECTION ONE.

SO, WIRE THE ACCOUNTS --

WHAT IS IT ABOUT THE

CHARACTERISTICS OF THESE

ACCOUNTS UNDER SUBSECTION ONE

THAT IT'S NOT SPECIAL IN THE WAY

YOU USE THE TERM IN YOUR BRIEF?

>> THE MONEY IN SUBSECTION ONE

CANNOT BE USED FOR THE PURPOSES

THAT THE ACCOUNT IN SUBSECTION 2

IS FOR.

>> BUT FOR A LOT OF OTHER

PURPOSES IN THE WORLD IT IS.

>> THE SUBSECTION ONE ACCOUNT

CAN'T BE USED FOR ANYTHING.

IT HAS TO STAY THERE AND TOOK

THOSE IN.

>> WHY IS THAT A SPECIAL

ACCOUNT?

>> THE LEGISLATURE DIDN'T DEFINE

THAT AS A SPECIAL ACCOUNT.

>> EXPLAINED THEN AGAIN AND THEY

WANT TO MAKE SURE BECAUSE

SUBSECTION TWO SAYS, IT SAYS THE
SPECIAL ESCROW ACCOUNT
ESTABLISHED AS PROVIDED IN
SUBSECTION ONE, SO THEY ARE --
SUBSECTION ONE MONEY THE 10% OF
THE ONES THAT REALLY NEED THE
PROTECTION, THAT THEY CAN'T
BE --

THEY CAN'T BE USED BY THE
DEVELOPER FOR ANY PURPOSE IN
CONSTRUCTION, RIGHT?

>> CORRECT.

>> SO AGAIN THEY ARE USING THOSE
SPECIAL ESCROW ACCOUNTS FROM
SUBSECTION ONE AS WELL AS THEN
IN SUBSECTION 3?

>> WHAT THEY ARE REFERRING TO IS
NOW YOU'VE ESTABLISHED THAT
ACCOUNT MEANING OF ESTABLISHED
THAT ACCOUNT MEANING YOU
ESTABLISHED THEM OUTSIDE THE
ESCROW AGENT CONTENT NOT WITH AN
ACCOUNT HELD BY THE DEVELOPER

UNDER THAT REST OF THE CRITERIA
SENT FORTH IN THE STATUTE SO I
DON'T THINK IT'S SAYING UNDER
ANY --

I DON'T THINK THE STATUTE --

I THINK WHAT YOU WOULD BE DOING
IS TAKING OVER SPECIAL

SUBSECTION 2 AND IGNORING IT.

YOU WOULD NOT BE GIVING IT ANY

MEANING IF YOU TREATED IT AS

THIS IS NO DIFFERENT THAN WHAT

WAS NOT REFERRED TO AS A SPECIAL

ACCOUNT.

>> WELL IT'S PRETTY SPECIAL IF

YOU DON'T ABIDE BY THIS YOU ARE

A FELON.

THAT IS SPECIAL.

[LAUGHTER]

>> YOUR HONOR, FOR ALL OF US WHO

HAVE LIVED IN FLORIDA FOR ANY

LENGTH OF TIME I THINK WE CAN

CERTAINLY UNDERSTAND THE

LEGISLATURE'S WISDOM AND

REACTING TO WHAT HAS HAPPENED
OVER THE COURSE OF REAL ESTATE
DEVELOPMENT IN SETTING UP A
STRICT LIABILITY SCHEME THAT
DEVELOPERS HAVE TO RESPOND TO.

I'M SURE THIS COURT HAS SEEN
MORE THAN ONE CASE OF PURCHASERS
WHO HAVE LOST THEIR DEPOSITS TO
DEVELOPERS.

THAT IS WHY 718.202 WAS
ESTABLISHED TO PROTECT
PURCHASERS AND THAT IS EXACTLY
WHAT WAS BEING DONE.

[INAUDIBLE]

THE WORDS THAT HAVE BEEN IN
THEIR UP THROUGH 1974 IS A
SEPARATE ACCOUNT SO WHEN YOU SAY
A SPECIAL HAS A MEANING, COULD
HAS TO MEAN SEPARATE, I DON'T
SEE --

WHERE DID YOU GET THAT?

>> I THINK A FAIR INTERPRETATION
FOLLOWING THROUGH THE

LEGISLATIVE CHANGES OVER THE
YEARS WOULD BE DETAILED IN OUR
BRIEF YEAR BY YEAR CHANGE BY
CHANGE.

>> BUT IT MAKES NO SENSE ONCE
THEY PUT EVERYTHING IN THE HANDS
OF AN ESCROW AGENT.

OUT OF THE DEVELOPERS REACH.
THAT ACCOMPLISH THE PURPOSE THAT
COULD OTHERWISE HAVE BEEN VERY
VERY CLEARLY ABUSED ESPECIALLY
IN THE LAST 10 YEARS IF THE
DEVELOPER HAD HELD THE MONEY.

>> THAT ACCOMPLISHES THE ONE
PURPOSE OF THE DEVELOPER.

THERE WERE OTHER PROTECTIONS
AFFORDED.

>> YOU HAVEN'T GIVEN ME ONE.
YOUR CO COUNSEL DIDN'T GIVE ONE
PROTECTION THAT ISN'T THEREBY
HAVING AN ESCROW ACCOUNT WITH
SEPARATE ACCOUNTING.

>> I'M SHORT ON TIME SO I WILL

REFER TO 40 AND 42 IN OUR BRIEF
BUT I WILL ARTICULATE ONE FOR
EXAMPLE.

BANK FAILURES.

A BANK FAILS THAT IS HOLDING
THESE ESCROW ACCOUNTS.

BANKS ARE FEDERALLY INSURED.

HOW IS THAT ACCOUNT GOING TO BE
ASSURED?

IS IT GOING TO BE ASSURED US ONE
ACCOUNT OR IS ONE ACCOUNT OR IS
IT GOING TO BE INSURED BASED ON
EACH INDIVIDUAL PROPERTY, EATS
SEPARATE PURCHASER?

WE ATTACH THE RECORD IN THE
LOWER COURT THE FDIC OPINION
THAT ADDRESSES THIS ISSUE AND IT
TALKS ABOUT THE ASSURANCE RATHER
THAN JUST BEING \$250,000 FOR ONE
ACCOUNT APPLYING TO EACH
INDIVIDUAL PURCHASER FOR THE
DEPOSIT MONIES IN THAT ACCOUNT.

>> BUT IF YOU HAVE ALL OF THE

CANON RANCH --

THAT WAS THE DEVELOPER?

AND WHATEVER ELSE THE DEVELOPER
IS DOING?

THERE IS A WHOLE LOT MORE THAN
\$50,000.

>> THAT IS THE POINT, JUDGE.

>> IN MY VIEW THEY AT EACH OF
THEM SHOULD HAVE THEIR OWN
LITTLE SEPARATE ACCOUNT AND I
WOULD DO THE MAXIMUM PROTECTION.

>> BUT THEY GET THAT PROTECTION
BY HAVING IT IN THE SEGREGATED
ACCOUNT OR THE SPECIAL ACCOUNT
WHICH IS WHAT THE FDIC OPINION
SAID THAT WAS ATTACHED.

I KNOW I'M OUT OF TIME.

THERE ARE SEVERAL DIFFERENT
REASONS AND I WOULD ASK YOU IT'S
NOT JUST TAKING OUT THE HANDS OF
THE DEVELOPER.

THAT IS WHAT THE LEGISLATURE
ESTABLISHED A STRICT LIABILITY

STATUTE AND WHY THE NO HARM NO
FOUL WAS REJECTED BY THE THIRD
DCA IN THE CASE BELOW.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENT.

REBUTTAL?

>> REGARDING THE FDIC, THAT
WOULD REQUIRE THE ARGUMENT TO BE
BELIEVED AND THEN YOU WOULD HAVE
TO REQUIRE ACCOUNTS TO BE PUT IN
SEPARATE BANKS COME CANNOT JUST
SEPARATE ACCOUNTS IN ORDER TO
GET THE MAXIMUM PROTECTION.

>> WELL THAT'S NOT TRUE.

ISN'T IT EACH ACCOUNT INSURED UP
TO A CERTAIN AMOUNT BUT THE
ARGUMENT WOULD BE I WOULD RATHER
HAVE MINE IN A WHOLE SEPARATE
ACCOUNT AND NOT MINGLED WITH ALL
THE OTHER BUYERS.

>> THAT IS WHAT I MEAN.

IF THEY ARE MINGLED WITH THE
OTHER BUYERS THEY DON'T GET THE

PROTECTION THEY ARE SAYING THEY
WOULD HAVE.

IT WOULD HAVE TO BE IN DIFFERENT
BANKS.

>> BUT HE WAS SAYING JUST THE
OPPOSITE.

I THOUGHT HE WAS SAYING THAT THE
FDIC OPINION SAID THAT EACH
DEPOSITOR IN THAT ACCOUNT
WHETHER YOU ARE TALKING ABOUT
THE ESCROW ACCOUNT OR THE
SEPARATE ESCROW -- A SPECIAL
ESCROW ACCOUNT THAT EACH OF
THOSE PURSES HAS A PROTECTION AS
OPPOSED TO THE ENTIRE ONE.
THAT IS WHAT I THOUGHT HIS
ARGUMENT WAS IN THE FDIC
OPINION.

>> NO, I DON'T THINK THAT IS
WHAT IT SAID.

>> THEY HAVE NOT BEEN ABLE TO
IDENTIFY ANY ADDITIONAL
PROTECTION YOU WOULD GET FROM

HAVING TO ACCOUNTS AS OPPOSED TO
ONE ACCOUNT.

AS LONG AS THERE IS AN ESCROW
ACCOUNT AND AN INDEPENDENT
ESCROW AGENT PERK ON THE ISSUE
OF THE CRIMINAL --

>> WHAT ARE THE REQUIREMENTS FOR
THE ESCROW AGENT?

>> IT COULD BE A LICENSED
ATTORNEY.

IT COULD BE A BANK OR TRUST
COMPANY OR TITLE COMPANY.

THERE ARE CERTAIN PARTIES THERE
IN THE STATUTE.

>> I NOTICED THAT THE REAL
ESTATE SECTION SENT THEIR BRIEF,
TALKING ABOUT WHAT THE AMENDMENT
IT BUT NOBODY TALKED ABOUT
WHETHER THE LAWYERS IN THE LAST
20 YEARS, HOW THEY HAVE
INTERPRETED OR HOW IT'S BEEN
DONE IN PRACTICE.

>> IN PRACTICE YOU PUT IT IN ONE

TRUST ACCOUNT.

>> BUT WE DON'T KNOW THAT.

>> RIGHT.

ON THE CRIMINAL ASPECTS OF THE
STATUTE THE COURT I THINK
UNDERSTANDS THE RULE OF THE MANY
SHOULD APPLY EVEN IN THE CIVIL
CASE BECAUSE YOU HAVE TO
INTERPRET A STATUTE CONSISTENTLY
BUT THERE'S ANOTHER NUANCE THAT
EVEN IF YOU DON'T APPLY THE LAW
OF LIMINE YOU HAVE TO CONSIDER
THE CRIMINAL SANCTIONS OF THE
STATUTE IN INTERPRETING WHAT
THIS LEGISLATURE MUST HAVE MEANT
BECAUSE IF YOU INTERPRET THE
STATUTE AS THE APPELLEES WANT
YOU TO THEN YOU ARE SAYING THAT
THE LEGISLATURE INTENDED TO MAKE
A FELONY OUT OF NOT HAVING TWO
SEPARATE ACCOUNTS EVEN IF THEY
ARE BOTH -- even if it's in an
escrow account with an the

independent escrow agent that
the developer is strictly liable
and is responsible for a felony
EVEN IF HE TELLS HIS ESCROW
AGENT MAKE SURE YOU PUT THIS
INTO ACCOUNTS.

>> BUT IT DOES REQUIRE
WILLFUL --

>> YOU ARE RIGHT THAT IT DOES
REQUIRE YOU WILLFULLY PUT IT IN
ACCOUNTS AND EVEN IF YOU ARE
YOU'RE WRONG THAT YOU WERE ABLE
TO DO THAT.

AA RECOGNIZED IT WAS A CASE OF
FIRST IMPRESSION SO IN VIKING
LIKE JUSTICE --
HE SAID WERE VICTIMS AND OUT OF
THE CASE DECIDED THE ISSUE IN
THE CASES AFTER AA SOME OF THEM
LIKE MONA LISA THAT WAS CITED
HERE MONA LISA WAS BOUND BY THE
THIRD DISTRICT DECISION IN CRC.
ONCE THAT DECISION WAS ISSUED

THAT BECAME THE LAW OF THE STATE
OF FLORIDA AND EVER LAW HAS TO
APPLY.

FINALLY I WOULD LIKE TO ADDRESS
JUSTICE PERRY'S CONCERN AND ON
PAGE 660 OF THE THIRD DCA
OPINION AND I'M QUOTING THE LAST
PART OF THE SENTENCE COMBO WE
CONCLUDE THAT ONE OF THE
LEGISLATURES EXPRESSED AN
INTENTION THAT THE 2010
AMENDMENT BE APPLIED
RETROACTIVELY BUT TWO
RETROACTIVE APPLICATION MUCH BE
REJECTED AS A CONTRACTUAL RIGHT.
ARTICLE I SECTION 2 OF THE
FLORIDA CONSTITUTION FOR THIS
RETROACTIVE APPLICATION UNDER
SUCH A CIRCUMSTANCE AND THAT WE
SUBMIT REVISED THE JURISDICTION
FOR THIS COURTS REVIEW.

>> THANK YOU FOR YOUR TIME.

>> THANK YOU FOR YOUR ARGUMENTS.

COURT IS ADJOURNED.

>> ALL RISE.