

>> THE NEXT CASE IS REYNOLDS
VERSUS STATE -- FLORIDA
DEVELOPMENT FINANCE COMPANY.

>> THANK YOU, YOUR HONOR.
MY NAME IS JAMES DINKINS ON
BEHALF OF FORMER STATE
REPRESENTATIVE ROBERT REYNOLDS
WHO JOINS US IN THE AUDIENCE
TODAY.

HE IS A FORMER LEGISLATOR,
FORMER POLICE OFFICER AND IS
INTERESTED IN GOOD POLICY, WHICH
IS WHY HE'S HERE TODAY.

BEFORE I BEGIN, I WOULD LIKE TO
BRING UP ONE POINT THAT I THINK
THAT IN ALL OF THE CASES ON THIS
SECTION 163.08 ALL OF THE
PARTIES HAS MISSED AND THAT IS
THE REASON THAT THE LOANS OR
ASSESSMENTS, HOWEVER YOU WANT TO
STYLE THEM, ARE IN FACT SPECIAL
ASSESSMENTS IS BECAUSE OF THE
FINANCING AGREEMENT.

THE FINANCING AGREEMENT IS
DESIGNED BY SECTION 163.08 OF
THE FLORIDA STATUTES TO NOT BE A
SECURITY INSTRUMENT, WHICH IS
ASSIGNABLE AND AS FDFC HAS
ARGUED AT LEAST BELOW, BUT IT'S
MERELY EVIDENCE OF A
NON-ADVALOREM ASSESSMENT AND
THAT THE DUE PROCESS
REQUIREMENTS FOR IMPOSITION OF
SUCH AN ASSESSMENT HAVE BEEN
COMPLIED WITH.

IT THEN GETS RECORDED SO IT'S
NOTICED TO MORTGAGE LENDERS,
SUBSEQUENT PURCHASERS AND OTHER
MEMBERS OF THE PUBLIC WHO MAY
HAVE USE OF CONSTRUCTIVE NOTICE
OF THE ASSESSMENT.

WE ASK THAT THIS COURT REVERSE
AND REMAND FOR THREE REASONS.
FIRST, THE LOWER COURT ERRED IN
GRANTING THE AUTHORITY THE
AUTHORITY TO IMPOSE NOT
ADVALOREM SPECIAL ASSESSMENTS
AND TO ENTER INTO FINANCING
AGREEMENTS WITH PROPERTY OWNERS
IN CONTRAVENTION OF FLORIDA

STATUTES.

SECOND, BECAUSE THE TRIAL COURT
ERRED BY ESTABLISHING A WORKSHOP
REQUIREMENT RATHER THAN A --

>> IS THIS THE SAME SET OF --

THESE ARE THE SAME STATUTES
INVOLVED.

>> YES, YOUR HONOR.

>> IS THIS A PARTICULAR BOND NOW
THAT'S -- HOW IS THIS DIFFERENT
FROM THE LAST CASE?

>> THIS IS AN APPEAL OF THE VERY
SAME CASE.

I WAS TRIAL COUNSEL ON THIS
CASE.

>> SO YOU'RE ARGUING AGAINST THE
ARGUMENT IN THE FIRST CASE; THAT
IS, THAT THE STATUTE'S
UNCONSTITUTIONAL.

>> IT'S A STRANGE POSTURE.

MR. REYNOLDS CONCEDED THAT THE
STATUTE IS FACIALLY
CONSTITUTIONAL.

IT COMPLIES WITH ALL THE
REQUIREMENTS OF LAW.

THE REASON THESE BONDS ARE NOT
VALID BECAUSE OF ANY INFIRMITY
IN THAT SECTION, BUT BECAUSE
IT'S NOT A LOCAL GOVERNMENT
THAT'S AUTHORIZED TO IMPOSE
THESE ASSESSMENTS AND ENTER INTO
AGREEMENTS AS IS SPECIFIED IN
THAT STATUTE.

THEY DIDN'T FOLLOW THE STATUTE.
THEREFORE THE BONDS ARE NOT
VALID.

THE THIRD REASON THAT THIS COURT
SHOULD REVERSE AND REMAND IS
BECAUSE THE CASE BELOW AFTER
FLORIDA DEVELOPMENT FINANCE
CORPORATION ADMITTED IT HAD NO
AUTHORITY TO IMPOSE THE
ASSESSMENTS BECAME UNRIPE FOR
REVIEW.

THEREFORE, THE BONDS IN FACT
FAIL THREE OF THE FOUR PRONGS
ESTABLISHED IN FLORIDA KEYS
AQUEDUCT AUTHORITY FOR VALIDITY
OF A BOND.

THE FIRST POINT THAT I'D LIKE TO

MAKE IS READING OF SECTION
163.08.

IN SUB 2 OF THAT STATUTE THERE'S
A DEFINITION OF LOCAL
GOVERNMENT, A CITY, A COUNTY OR
ONE OF TWO VERY SPECIFIC TYPES
OF ENTITIES THAT ARE WHOLLY
CONTROLLED BY CITIES OR
COUNTIES.

THOSE ARE THE ONLY ENTITIES
AUTHORIZED UNDER SUBSECTION 4 TO
ENTER INTO FINANCING AGREEMENTS
AND THE ONLY ENTITIES AUTHORIZED
TO IMPOSE NON-ADVALOREM SPECIAL
ASSESSMENTS.

THE TRIAL COURT ERRED --

>> HOW WOULD THAT ACTUALLY
APPEAR ON THE -- IF THIS IS
DONE, SOMEBODY APPLIES --

>> RIGHT.

>> HOW DOES THAT THEN APPEAR ON
THE BILL, THE TAXING BILL, FROM
-- DOESN'T IT COME FROM -- IT
COMES FROM THE MUNICIPALITY OR
THE COUNTY OR THE STATE.

HOW DOES THAT --

>> IT DEPENDS, YOUR HONOR.

IT'S UNCLEAR IN THE FINAL
JUDGMENT HOW THAT WAS TO BE.

THERE WAS AN ARGUMENT
SIGNIFICANTLY AT THE INITIAL
HEARING AND THEN AGAIN ON
REHEARING ABOUT THE EXACT
LANGUAGE THAT WOULD GO IN
PARAGRAPH 28 OF THE FINAL
JUDGMENT.

THE TRIAL COURT APPEARED TO HOLD
-- AND FLORIDA DEVELOPMENT
FINANCE CORPORATION APPEARED TO
CONCEDE -- THAT IT HAD NO
AUTHORITY TO IMPOSE IT UNDER
THEIR STATUTE, ALTHOUGH THEY NOW
ARGUE THEY MAY HAVE THAT
AUTHORITY.

I DIDN'T UNDERSTAND THAT
ARGUMENT.

>> I THOUGHT THE AGREEMENT IS
BETWEEN THEM AND THE LOCAL
GOVERNMENT?

NO.

>> THERE'S AN AGREEMENT BETWEEN FLORIDA DEVELOPMENT FINANCE CORPORATION AND A LOCAL GOVERNMENT AND THEN IN THEORY BASED ON WHAT WAS SAID AT THE HEARING THE LOCAL GOVERNMENT WOULD IMPOSE THE ASSESSMENT AND THE CORPORATION WOULD SIMPLY ADMINISTER THE PROGRAM ON THEIR BEHALF.

HOWEVER --

>> BUT HOW DOES THAT AFFECT THE VALIDITY OF THE BONDS TO BE ISSUED?

I MEAN, AND I GUESS -- MAYBE THIS IS A RELATED QUESTION. HOW DOES THIS -- I REALIZE HE HAD STANDING, APPEARED BELOW, BUT WHY WOULD MR. REYNOLDS CARE? IN OTHER WORDS, IT SEEMS LIKE THIS IS A MORE STABLE WAY TO DO IT.

YOU'VE GOT A GROUP THAT GETS THE MONEY AND THEN THEY END UP DISTRIBUTING IT THROUGH LOCAL GOVERNMENTS AND THEY ALL PARTICIPATE.

NO?

>> NOT QUITE, YOUR HONOR.

>> YOU COULD COME UP WITH -- THERE'S NOT A T CROSSED OR AN I DOTTED.

WHAT'S THE REAL PROBLEM.

THERE ALWAYS SHOULD BE A REAL PROBLEM BEFORE WE --

>> THE REAL PROBLEM IS THE LEGISLATURE GAVE THE POWER TO ENTER INTO THESE FINANCING AGREEMENTS AND IT IMPOSED THESE ASSESSMENTS TO A DEFINED GROUP OF PEOPLE.

>> BUT IF IT'S -- AND THAT WAS -- YOU RAISED THAT.

>> YES, YOUR HONOR.

>> AND THE FINAL JUDGMENT SAYS WHAT, THAT THEY ARE?

>> THE FINAL JUDGMENT -- THERE ARE TWO POINTS I'D LIKE TO MAKE ON THAT.

PARAGRAPH 28, THE IMPOSITION OF

THE ASSESSMENT, SAYS THAT THE ASSESSMENTS WILL BE IMPOSED ON PROPERTY PURSUANT TO THE AUTHORITY OF THE LOCAL GOVERNMENT.

IT'S UNCLEAR WHETHER THAT MEANS THE LOCAL GOVERNMENT IS DELEGATING THE POWER TO IMPOSE ASSESSMENTS, WHICH WOULD VIOLATE SUBSECTION 4, OR WHETHER IT MEANS THE LOCAL GOVERNMENT THEMSELVES ARE IMPOSING THE ASSESSMENTS.

THE OTHER PROBLEM IS IN PARAGRAPH --

>> EITHER WAY -- BUT ISN'T THAT -- WON'T THAT BE WORKED OUT AT THE TIME -- AGAIN, THE MONEY HASN'T BEEN -- THE BONDS HAVEN'T BEEN ISSUED.

THE MONEY HASN'T FLOWED. WHY WOULD THAT MATTER FOR THE VALIDITY OF THE BONDS AS OPPOSED TO SOMETHING THAT IS DONE AT A LATER STAGE?

>> OKAY.

I THINK I UNDERSTAND YOUR QUESTION, YOUR HONOR.

>> I MEAN, AGAIN, YOU'RE IN THE CLOUDS AND I'M JUST TRYING TO BE DOWN --

>> IF YOU GO BACK TO THE AQUEDUCT AUTHORITY --

>> IT MAY NOT BE THE CLOUDS. IT MAY BE A VERY IMPORTANT ISSUE.

>> THIS IS JUST ABOUT FOLLOWING WHAT THE LEGISLATURE CLEARLY STATED IN STATUTE.

BUT IF YOU GO BACK TO THE FLORIDA KEYS AQUEDUCT AUTHORITY CASE, IT ESTABLISHES 3.5 PRONGS. IT SAYS THAT IN ORDER FOR A BOND TO BE VALID AND THE ONLY THING THAT CAN BE CONSIDERED IN A BOND VALIDATION CASE IS WHETHER THE BOND IS ISSUED FOR A PUBLIC PURPOSE, WHETHER THE ENTITY ISSUING THE BOND IS AUTHORIZED TO DO SO, WHETHER THE BONDS

COMPLY WITH THE REQUIREMENTS OF LAW AND THEN WHAT I TERM A PHANTOM FOURTH PRONG, WHICH IS ANY MATTERS SUBSTANTIALLY RELATED TO THE ISSUANCE OF THE DEBT.

WHEN SUCH MATTERS ARE PLED, IT'S INCUMBENT UPON THE PLAINTIFF TO PROVE UP WHAT IT PLED.

IT PLED IT HAD THE AUTHORITY TO IMPOSE ASSESSMENTS AND ENTER INTO FINANCING AGREEMENTS AND THEN AGAIN THAT IT HAD THE AUTHORITY TO ISSUE THE BONDS. IT DOES HAVE THE AUTHORITY TO FINANCE THESE ASSESSMENTS.

THAT'S GRANTED TO IT.

IT DOES NOT HAVE THE AUTHORITY TO ENTER INTO FINANCING AGREEMENTS.

THAT'S RESERVED SPECIFICALLY TO LOCAL GOVERNMENTS AS DEFINED IN SUB 2 AND IT DOES NOT HAVE THE AUTHORITY TO IMPOSE ASSESSMENTS. IT HAS NO IMPOSITION AUTHORITY BASED ON ITS OWN ORGANIC STATUTES.

DOES THAT ANSWER YOUR QUESTION?

>> I'LL HAVE TO LIKE SIFT THROUGH IT AFTERWARDS.

IT PROBABLY DOES.

>> I THINK PERHAPS THE MOST OBVIOUS EXAMPLE OF ERROR IN THE FINAL JUDGMENT COMES FROM PARAGRAPH EIGHT.

IT SAYS THAT THE PLAINTIFF, FLORIDA DEVELOPMENT FINANCE CORPORATION, OR ITS DESIGNEE SHALL ENTER INTO FINANCING AGREEMENTS TO IMPOSE THESE SPECIAL ASSESSMENTS.

(4), THE FIRST SENTENCE, SPECIFICALLY SAYS ONLY LOCAL GOVERNMENTS ARE AUTHORIZED TO ENTER INTO FINANCING AGREEMENTS. THE FINAL JUDGMENT IN THAT CASE IS SIMPLY WRONG ON THE LAW. FOR THAT REASON ALONE, THIS COURT SHOULD REVERSE AND REMAND. I THINK THAT ONE COULD READ

HOWEVER THEY WANT TO THAT
PARAGRAPH 28 ABOUT THAT USES
PASSIVE VOICE TO SAY THE
ASSESSMENT SHALL BE IMPOSED
FIRST.

MR. REYNOLDS ARGUES THAT THAT
LANGUAGE IS NOT CLEAR ENOUGH AND
IS AN OPENING THROUGH WHICH THE
FLORIDA DEVELOPMENT FINANCE
CORPORATION COULD DRIVE A MACK
TRUCK AT SOME POINT IN THE
FUTURE WHEN A HOMEOWNER ATTEMPTS
TO OPPOSE THE IMPOSITION BY
FLORIDA DEVELOPMENT FINANCE
CORPORATION.

THEY'RE GOING TO HOLD UP THEIR
FINAL JUDGMENT AND --

>> OPPOSE WHAT IMPOSITION?

I GUESS -- THEY'RE NOT -- IF THE
ASSESSMENT IS NOT GOING TO BE
MADE ON THE TAX BILL, THEN
FLORIDA DEVELOPMENT
CORPORATION'S NOT GOING TO BE
THERE, RIGHT?

IT'S GOING TO BE THE LOCAL
ENTITY.

IT'S THE LOCAL GOVERNMENT THAT'S
MAKING THE ASSESSMENT.

>> ACCORDING TO WHAT FLORIDA
DEVELOPMENT FINANCE CORPORATION
PROMISED THE TRIAL JUDGE, YES.
THAT DOESN'T APPEAR IN THE FINAL
JUDGMENT.

WHICH IS WHY --

>> CAN WE SAY THAT THESE BONDS
ARE VALID SUBJECT TO THE LOCAL
GOVERNMENT ACTUALLY IMPOSING THE
ASSESSMENT?

>> NO, YOUR HONOR, BECAUSE THAT
WOULD STILL VIOLATE SECTION
163.08(4) WHICH SAYS THE LOCAL
GOVERNMENT HAS TO ENTER INTO THE
FINANCING AGREEMENT WITH THE
PROPERTY OWNER AND THE FINAL
JUDGMENT VERY EXPLICITLY SAYS
THAT FDFC WOULD ENTER INTO THESE
FINANCING AGREEMENTS.

I THINK THAT WE CAN BOIL DOWN
THE ARGUMENT ON THE WORKSHOPPING
ISSUE TO A FAIRLY SIMPLE --

>> IN THE OTHER CASES THAT WE HEARD LAST MONTH, THE CORPORATION WAS -- IT WAS -- THESE WERE ACTUALLY LOCAL GOVERNMENTS?

>> THAT'S CORRECT, YOUR HONOR. IT WAS EITHER -- I BELIEVE ONE WAS LEON COUNTY.

THE OTHER ONE WAS AN INTERLOCAL ENTITY CREATED UNDER --

>> SOMEHOW DID BROWARD COUNTY -- HOW DID THE BROWARD COUNTY STATE ATTORNEY GET INVOLVED IN THIS CASE?

>> BECAUSE THE FLORIDA DEVELOPMENT FINANCE CORPORATION PLED AND SERVED STATE ATTORNEYS IN I BELIEVE ALL 20.

>> SO IT COULD HAVE BEEN ALL 20 STATE ATTORNEYS THAT COULD HAVE APPEARED.

>> CORRECT.

>> OR 18.

>> I BELIEVE IT WAS 18.

I THINK --

>> IS THIS A PRIVATE OR PUBLIC CORPORATION?

IS IT A CREATURE OF THE LEGISLATURE?

>> IT IS A PUBLIC ENTITY, CORPORATE AND POLITICK, CREATED BY THE LEGISLATURE.

I GUESS THAT ALSO RAISES THE POINT WITH THE AUTHORITY TO IMPOSE ASSESSMENTS.

THE CASE CITY OF CAPE CORAL OUTLINES THE REQUIREMENT THAT AS A CREATURE OF STATUTE, ONE, SPECIFICALLY ONLY HAS THE POWERS EXPRESSLY OR IMPLIEDLY GRANTED TO IT BY THE STATUTE.

IF THERE'S ANY DOUBT AS TO WHETHER THERE'S AUTHORITY TO DO SOMETHING, THAT SHOULD BE RESOLVED AGAINST THE EXERCISE OF THE CLAIMED AUTHORITY.

THAT'S BEEN THE LAW OF THIS STATE FOR QUITE A WHILE.

IN THIS CASE WHAT WE HAVE IS AN ARGUMENT THAT BECAUSE THERE'S A

NECESSARY AND PROPER CLAUSE IN THE POWERS, THEN THAT GIVES THEM SOMEHOW THE POWER TO ASSESS. THERE'S ALSO AN ARGUMENT THE LEGISLATURE MADE AN OVERSIGHT WHEN IT ONLY GAVE THE POWER TO FINANCE THE ASSESSMENTS.

AND I THINK THAT THAT'S BELIED BY RECENT LEGISLATIVE ACTIVITY. FLORIDA DEVELOPMENT FINANCE CORPORATION ATTEMPTED TO INTRODUCE LEGISLATION THAT WOULD HAVE GRANTED IT THOSE AUTHORITIES THAT IT CLAIMS WERE MISTAKEN BY AN OVERSIGHT. WHILE THAT LEGISLATION PASSED IN THE HOUSE, IT WAS REJECTED IN THE SENATE.

>> WELL, TAKING ANYTHING ABOUT WHAT HAPPENED IN THIS LAST LEGISLATIVE SESSION AS EVIDENCE OF SOMETHING IS -- WOULD BE I THINK AGAINST COMMON SENSE, THOSE THAT OBSERVED THE SESSION.

>> ABSOLUTELY.

IT'S ONE OF THOSE OBSERVATIONS THAT --

>> WELL, NOT IN THIS SESSION. IT IS AND IT ISN'T.

NOT BECAUSE SOMEONE TRIES TO GET LEGISLATION PASSED AND IT DOESN'T GET PASSED.

IT COULD BE NOT PASSED BECAUSE THEY WANT TO SPITE THE HOUSE.

>> ENTIRELY POSSIBLE, YOUR HONOR.

ENTIRELY POSSIBLE.

MOVING ON TO THE WORKSHOPPING ARGUMENT, THE POINT THAT I'D LIKE TO MAKE IS JUST TO QUICKLY GO THROUGH SOME OF THE CASES CITED IN THE ANSWER BRIEF.

I THINK THAT THE ARGUMENT IS FAIRLY CLEAR.

WHEN YOU HAVE A WORKSHOPPING SESSION, IT'S NOT A SHOW CAUSE SESSION AS IS PROSCRIBED BY CHAPTER 75.

IN A SHOW CAUSE HEARING THE POINT IS TO HAVE ONE OF THE

PARTIES COME FORWARD AND SHOW CAUSE WHY AN ACTION SHOULDN'T BE TAKEN.

ONCE THE CAUSE IS SHOWN AND ISN'T REBUTTED BY THE OPPOSING PARTY, THEN THE ENTIRE THING GOES AWAY AND THE ACTION IS NOT TAKEN, JUST LIKE IF A COURT WERE TO ORDER SOMEONE TO SHOW CAUSE WHY THEY SHOULDN'T BE HELD IN CONTEMPT, IF CAUSE IS ADEQUATELY SHOWN, THEN THE SPECTER OF CONTEMPT GOES AWAY.

THE SAME IN THIS.

WHEN YOU GO INTO A WORKSHOPPING SESSION WHERE YOU'RE ACTUALLY CHANGING WHAT THE LEGISLATIVE BODY, IN THIS CASE THE GOVERNING BODY OF THE FLORIDA DEVELOPMENT FINANCE CORPORATION, HAD ENACTED, THEN WHAT YOU'RE TAKING IS A ROLE THAT'S LEGISLATIVE IN NATURE, THE CREATION OF LAW, AND GRANTING IT TO THE JUDICIARY. THAT VIOLATES THE SEPARATION OF POWERS PRINCIPLES THAT ARE ESTABLISHED BY THIS COURT AND BY OUR CONSTITUTION.

I THINK THAT IF WE GO THROUGH EACH OF THE CASES THAT WERE CITED, STATE VERSUS THE CITY OF SARASOTA IS ONE THAT SAYS IF YOU'RE SUBSTANTIALLY COMPLYING WITH PROCEDURAL RULES OF CHAPTER 75, YOU MIGHT BE ABLE TO GET SOME THINGS OUT OF ORDER, THEN THAT'S GOING TO BE FINE.

THERE'S NO NEED TO GO BACK TO THE BEGINNING AND REFILE A VERBATIM COPY OF THE SAME COMPLAINT.

IN THAT CASE THERE WAS PROBLEM WITH THE NOTICE, NOT THE COMPLAINT ITSELF.

THE TRIAL COURT ISSUED A NEW SHOW CAUSE ORDER THAT WAS REPUBLISHED AND IT CONTINUED ACCORDING TO STATUTE.

THAT HAS NOTHING TO DO WITH THE CASE HERE WHERE IF YOU REFILED

THE SAME COMPLAINT, IT WOULD BE SUBJECT TO THE SAME PROBLEMS THAT WERE PRESENT HERE; NAMELY, THAT IT RAISED THE SPECTER OF JUDICIAL CONTEMPT AND THAT FLORIDA DEVELOPMENT FINANCE CORPORATION DOESN'T HAVE THE AUTHORITY TO ENTER INTO FINANCING AGREEMENTS.

IT WOULD BE AN EXERCISE IN FUTILITY TO REFILE THE SAME COMPLAINT.

MAYBE AN AMENDED ONE.

I'M NOT SURE.

IN TOWN OF LAKE PARK, THAT WAS ABOUT SUBSTANTIVE SUBSTANTIAL COMPLIANCE WITH CHAPTER 170, WHICH IS AN ALTERNATIVE AND SUPPLEMENTAL METHOD FOR IMPOSITION OF SPECIAL ASSESSMENTS.

THAT CASE IS CLEARLY DISTINGUISHABLE FROM THIS BECAUSE THERE WEREN'T PROCEDURAL ISSUES, BUT RATHER AUTHORITY ISSUES GOING TO THAT SECOND PRONG.

IN TURNPIKE AUTHORITY I THINK THAT'S THE CLEAREST ONE BECAUSE WE'RE GOING FROM SOMETHING THAT IS VALID TO SOMETHING THAT IS VALID.

THEY CHANGED IT FROM SOMETHING PERMISSIBLE TO ALSO PERMISSIBLE. I THINK THAT ALL THOSE CASES SUPPORT INGRAM, WHICH HOLDS THAT YOU'VE GOT TO COMPLY WITH THE STATUTORY AUTHORITY IN ORDER FOR BONDS TO BE VALIDLY ISSUED, WHICH HOLDS THAT WHERE MANDATORY REQUIREMENTS OF STATUTE ARE NOT MET, THEN THE STATUTE WON'T BE -- OR THEN THE BONDS WON'T BE VALIDATED AND THEN ALSO CHANGING THINGS AT THE LAST MINUTE WITHOUT PROVIDING AN OPPORTUNITY TO FILE PLEADINGS IS PROBLEMATIC.

I SEE I AM INTO MY REBUTTAL TIME.

IF THERE ARE NO FURTHER QUESTIONS, I'LL RESERVE THE REMAINDER.

>> MAY IT PLEASE THE COURT, RAOUL CANTERO AGAIN FOR FDFC. MR. REYNOLDS ESSENTIALLY COMPLAINS IN THIS APPEAL THAT WE ADDRESSED HIS CONCERNS. WHEN WE FILED THE COMPLAINT AND THE ORDER TO SHOW CAUSE WAS ISSUED, MR. REYNOLDS RESPONDED TO THE ORDER TO SHOW CAUSE AND IDENTIFIED TWO PROBLEMS WITH OUR DOCUMENTS.

THE FIRST WAS THAT IT PROVIDED FOR JUDICIAL FORECLOSURE AND THE SECOND WAS THAT IT PROVIDED FOR FDFC TO MAKE THE SPECIAL ASSESSMENTS AND HE ARGUED THAT FDFC DID NOT HAVE THE AUTHORITY TO MAKE THE SPECIAL ASSESSMENTS. WE ADDRESSED BOTH OF THOSE ISSUES.

WE REMOVED THE LANGUAGE ON JUDICIAL FORECLOSURE IN THE FINANCING AGREEMENT, AND IF YOU LOOK AT -- YOU COMPARE PAGE 2 OF OUR SUPPLEMENTAL APPENDIX WITH PAGE 146 OF THEIR APPENDIX, I THINK IT'S SECTION 4s, YOU'LL SEE THAT THE LANGUAGE WAS REMOVED.

IN ADDITION, THE JUDGMENT MAKES CLEAR-- AND THE JUDGMENT IS REALLY WHAT GOVERNS-- MAKES CLEAR THAT IT IS THE MUNICIPALITIES THAT WILL HAVE THE AUTHORITY.

MY OPPONENT SAYS THAT IT'S NOT CLEAR ENOUGH.

I WANT TO READ YOU FROM PAGE 301 OF THE APPENDIX, PAGE 14 OF THE JUDGMENT, WHICH IS PART OF PARAGRAPH 28.

IT SAYS THE IMPOSITION OF THE PROGRAM'S SPECIAL ASSESSMENTS SHALL BE PURSUANT TO THE AUTHORITY OF THE LOCAL GOVERNMENTS THAT ARE PARTIES TO THE INTERLOCAL AGREEMENTS.

PLAINTIFF, WHICH IS FDFC, IS AUTHORIZED PURSUANT TO THE INTERLOCAL AGREEMENT TO PERFORM SUCH ADMINISTRATIVE AND PROCEDURAL ACTS AS MAY BE AGREED TO BETWEEN THE PARTIES TO ASSIST IN THE FACILITATING THE IMPOSITION OF THE PROGRAM'S SPECIAL ASSESSMENTS.

SO IT WAS CLEAR FROM THE JUDGMENT, WE THINK, THAT IT IS THE LOCALITIES THAT HAVE THE AUTHORITY TO IMPOSE SPECIAL ASSESSMENTS THAT WILL DO SO. THAT WAS CHANGED.

SO ESSENTIALLY THEY'RE ARGUING THEY ADDRESSED OUR CONCERNS, BUT NOW WE HAVE TO GO BACK, KIND OF LIKE WHAT HAPPENED IN THOMAS VERSUS STATE, WHICH YOU HEARD IN FEBRUARY AND ALSO REYNOLDS, THEY'RE SAYING, WELL, YOU HAVE TO GO BACK AND START OVER.

WE DON'T THINK THAT WE NEED TO DO THAT.

IT'S CLEAR FROM THE JUDGMENT. AND THE JUDGMENT PROVIDES THAT THE BONDS SHALL BE STAMPED WITH THE DATE AND PLACE OF THE JUDGMENT WHERE IT WAS RENDERED, WHICH IS ALSO IN THE FLORIDA STATUTES.

SO THERE WAS TESTIMONY AT THE HEARING ON PAGE I BELIEVE 41 OF THE HEARING TRANSCRIPT THAT THAT'S ONE OF THE THINGS THAT THE POTENTIAL BOND PURCHASERS LOOK AT, IS THE JUDGMENT UNDERLYING VALIDATION OF BONDS, AND THAT'S WHY YOU STAMP ON THE BONDS THE DATE AND PLACE OF THE JUDGMENT.

SO THE JUDGMENT IS GOING TO GOVERN HERE.

THE SECOND DEFICIENCY WAS -- I THINK I SAID THE FORECLOSURE. THAT WAS ADDRESSED AS WELL. WE TOOK THAT OUT.

AND IT'S ALSO IN THE JUDGMENT THAT SAYS THAT THE ASSESSMENTS

WILL BE MADE PURSUANT TO THE UNIFORM ASSESSMENT COLLECTION ACT, WHICH IS SECTION 197.3632 FLORIDA STATUTES.

SO THAT'S I BELIEVE AT PAGE 293, 292 TO 293 OF THEIR APPENDIX AND 299.

THE JUDGMENT SAYS IT IN BOTH PLACES, THAT THIS IS GOING TO BE PURSUANT TO THE UNIFORM METHOD. SO WE ADDRESSED THE CONCERN WITH FORECLOSURE, TOOK THAT OUT.

WE ADDRESSED THE CONCERN WITH SPECIAL ASSESSMENTS.

WE MADE SURE THAT IT'S THE MUNICIPALITIES THAT ARE GOING TO ASSESS.

THIS NEW ISSUE THAT WAS RAISED, WHICH WAS THAT THE FDFC DOES NOT HAVE THE AUTHORITY TO ENTER INTO FINANCE AGREEMENTS, QUITE FRANKLY I HAVEN'T HEARD THAT BEFORE.

I DON'T REMEMBER SEEING THAT IN THE BRIEFS.

AND PERHAPS THAT'S WHY WE DIDN'T RESPOND TO THEM.

I DON'T SEE THAT ANYWHERE IN THE BRIEFS.

THE ARGUMENT THAT WAS MADE WAS THAT FDFC DOESN'T HAVE AUTHORITY EVEN TO ENTER INTO INTERLOCAL AGREEMENTS FOR THIS, BUT WE CITED SEVERAL STATUTES.

AND THESE ARE ALL STATUTES WITH LONG NUMBERS, BUT 288.9605 AND 9606 GIVE THE FDFC COMBINED, NUMBER ONE, AUTHORITY TO ENTER INTO INTERLOCAL AGREEMENTS, WHICH IS AT 288.9605(2)(E), AND THEN ISSUE REVENUE BONDS TO FINANCE QUALIFYING IMPROVEMENTS UNDER 163.08, AND THAT'S AT 288.9606(7)(C).

SO THOSE TWO THINGS COMBINED GIVE FDFC THE AUTHORITY TO ENTER INTO INTERLOCAL AGREEMENTS WHEREBY THEY WILL ISSUE THE BONDS AND THE MUNICIPALITIES INVOLVED WILL THEN MAKE THE

ASSESSMENTS.

WE DON'T BELIEVE THAT THIS IS A BIG CHANGE THAT NEEDED TO BE RE-NOTICED TO EVERYBODY, AND CERTAINLY I DON'T THINK MR. REYNOLDS, WHO HAD NOTICE, HAS STANDING TO ASSERT THE RIGHTS OF SOMEBODY ELSE WHO MAY NOT HAVE GOTTEN NOTICE.

>> SO BUT AS IT STANDS, THE FINANCING AGREEMENTS ARE ENTERED INTO BY THE AUTHORITY?

>> FDFC, YES.

>> YES.

>> AND THEN THERE WAS ALSO -- THIS WASN'T JUST A HEARING WITH ORAL ARGUMENTS.

THIS WAS AN EVIDENTIARY HEARING WITH TESTIMONY, AT WHICH MR. REYNOLDS' COUNSEL PARTICIPATED, WAS ABLE TO CROSS-EXAMINE WITNESSES, DID NOT CONTEST TO THE ADMISSIBILITY OR THE ADMISSION OF THE AMENDED FINANCING AGREEMENTS THAT REMOVED THE LANGUAGE OF THE FORECLOSURE, CROSS-EXAMINED WITNESSES ON THAT.

THE WITNESSES MADE CLEAR THAT THERE WOULD NOT BE ANY FORECLOSURE, MADE CLEAR THAT IT WOULD BE THE MUNICIPALITIES OR COUNTIES THAT WOULD BE MAKING THE SPECIAL ASSESSMENTS.

SO THE ONLY ISSUE IS WHETHER THAT COULD BE DONE IN THE CONTEXT OF THE HEARING, WHAT HE CALLS A WORKSHOP ENVIRONMENT. AND IT IS THE JUDGMENT THAT THEN GOVERNS, THE JUDGMENT THAT THE BOND PURCHASERS WILL SEE, AND THE JUDGMENT MAKES CLEAR THAT BOTH OF THOSE ISSUES HAVE BEEN ADDRESSED.

UNLESS THE COURT HAS ANY QUESTIONS, WE ASK THAT YOU AFFIRM THE JUDGMENT.

>> REBUTTAL?

>> THANK YOU, YOUR HONOR. VERY BRIEFLY, THE FLORIDA

DEVELOPMENT FINANCE CORPORATION
ARGUES OVER TECHNICALITY,
WHETHER THIS IS A WORKSHOP
ENVIRONMENT OR A SHOW CAUSE
HEARING.

WE ASK THAT THIS COURT READ THE
STATUTES AS THEY'RE WRITTEN.
CHAPTER 75 REQUIRES A SHOW CAUSE
HEARING.

WHEN CAUSE IS SHOWN, THE BONDS
ARE NOT VALID.

YOU GO BACK.

THE LEGISLATURE, NOT THE COURT,
FIXES ANY PROBLEMS.

AND THEN YOU HAVE THE
OPPORTUNITY TO COME FORWARD AND
AGAIN HAVE A NEW SHOW CAUSE
HEARING.

SIMILARLY --

>> SO YOUR BASIC ARGUMENT IS
THAT THE COURT DIDN'T HAVE THE
AUTHORITY TO SAY THAT YOU HAVE
TO TAKE OUT THE JUDICIAL
FORECLOSURE AND THAT IN THE
FINAL JUDGMENT, IF THAT'S TAKEN
OUT, THAT'S NOT SUFFICIENT.

>> IT'S THE PROVINCE OF THE
LEGISLATURE.

>> THAT'S WHAT YOU SEEM TO BE
SAYING.

>> YES, YOUR HONOR.

IT'S THE PROVINCE OF THE
LEGISLATURE TO MAKE A DECISION
AS TO WHETHER THE BOND SHOULD BE
ISSUED WITH OR WITHOUT THE IDEA
OF JUDICIAL FORECLOSURE, WITH OR
WITHOUT A MUNICIPALITY IMPOSING
THE ASSESSMENTS.

>> AND ARE THEY AT THE HEARING?

>> I'M SORRY, YOUR HONOR?

>> IS THE LEGISLATIVE BODY AT
THE HEARING?

>> THEY ARE THROUGH THEIR
COUNSEL AND EXECUTIVE DIRECTOR,
WHO TESTIFIED.

YES, YOUR HONOR.

THERE ARE SOME QUESTIONS AS TO
THE CONSTITUTION OF FLORIDA
DEVELOPMENT FINANCE'S BOARD.
THAT HASN'T BEEN RAISED OR

BRIEFED, SO I'LL SKIP OVER THAT.
>> TALKING ABOUT THAT ISSUE, DID YOU RAISE THIS ONE IN YOUR BRIEFS, THE ONE YOUR OPPOSING COUNSEL SAID --

>> THAT'S RAISED.
IT'S IN THE MOTION FOR REHEARING.

IT WAS ARGUED AT THE HEARING ON THE MOTION FOR REHEARING.

AND IT'S IN THE BRIEFS.
I DON'T HAVE A CITATION, BUT, YES, IT IS.

>> OKAY.

>> I CAN'T PROMISE HOW CLEAR IT IS, OBVIOUSLY.

MR. CANTERO IS AN EXCELLENT LAWYER AND IF HE DIDN'T SEE IT IN THE BRIEFS, THEN IT PERHAPS WASN'T AS CLEAR AS IT SHOULD HAVE BEEN.

LOOKING AT THE PLAIN LANGUAGE OF THE STATUTES IS HOW THIS COURT RESOLVES THE CASE.

THE FINAL JUDGMENT GIVES FDFC THE AUTHORITY TO DO SOMETHING THAT IS FORBIDDEN.

THE TRIAL COURT IN WHAT WAS A GREAT EFFORT TO ATTEMPT TO RESOLVE AN ISSUE QUICKLY IGNORED THE FACT THAT IT WAS A SHOW CAUSE HEARING AND NOT A TRADITIONAL CIVIL LITIGATION, WHERE THE JUDGE HAS THE AUTHORITY TO PERHAPS MEDIATE BETWEEN THE PARTIES, AND INSTEAD SIMPLY MADE AN ERROR OF LAW ON BOTH THOSE COUNTS.

WE SUBMIT -- I DON'T HAVE ENOUGH TIME TO ARGUE IT -- THAT ON THE RIPENESS ISSUE THE TRIAL COURT ALSO ERRED.

WITH THAT I'LL ASK THIS COURT REVERSE AND REMAND ENTERING AN ORDER DENYING THE COMPLAINT FOR VALIDATION.

>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR TEN MINUTES.

>> ALL RISE.

