

>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
PLEASE BE SEATED.

>> NEXT CASE UP IS LEON,
REYNOLDS VERSUS LEON COUNTY
ENERGY IMPROVEMENT DISTRICT,
ET AL.

YOU MAY PROCEED.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.
STEPHEN MENTON ON BEHALF OF
APPELLANT ROBERT REYNOLDS.
THE CENTRAL ISSUE IN THIS CASE
AND I WOULD SUBMIT THE ONLY REAL
ISSUE THAT NEEDS TO BE RESOLVED
IS NARROW AND STRAIGHTFORWARD.

>> COULD I ASK YOU A QUESTION
ABOUT THE MOTION TO STRIKE AND
THE MOTION TO DISMISS.

DO YOU CONCEDE THAT MR. DINKINS
WAS RESPONSIBLE FOR DRAFTING THE
BRIEF THAT YOU SUBMITTED?

>> NO.

JUSTICE CANADY, I SIGNED THE
BRIEF.

I'M RESPONSIBLE FOR THE CONTENT.

>> THAT IS NOT MY QUESTION.

I UNDERSTAND YOU SIGNED IT.
DID HE PARTICIPATE-- DO YOU
CONTEST THAT HE PARTICIPATED IN
THE PREPARATION OF THAT BRIEF?

>> I DO NOT CONTEST THAT.

I WORKED WITH MR. DINKINS AND
MR. LAWSON ON SEVERAL RELATED
MATTERS DEALING WITH THE ISSUE
OF JUDICIAL FORECLOSURE AND
THERE CERTAINLY WAS A LOT OF
INTERCHANGE ABOUT BOTH THIS AND
OTHER CASES WHICH WE WERE
INVOLVED.

>> OKAY.

>> THE CENTRAL ISSUE IN THIS
CASE AND ONLY ISSUE WHETHER
JUDICIAL FORECLOSURE IS
APPROPRIATE REMEDY FOR
ASSESSMENTS LEVIED TO REPAY
BONDS UNDER THE AUTHORITY OF
SECTION 163.08, FLORIDA
STATUTES.

THE SIMPLE AND UNAVOIDABLE

ANSWER TO THAT QUESTION IS NO.
SECTION 163.0 AUTHORIZES
NON-ADVALORUM ASSESSMENTS IN
CAREFULLY LIMITED CIRCUMSTANCES
AND EXPRESSLY PROVIDES THE
ASSESSMENT SHALL ONLY BE
COLLECTED USING THE UNIFORM
METHOD OF COLLECTION PRESCRIBED
IN 197.3632 FLORIDA STATUTES.
UNIFORM COLLECTION DESCRIBED IN
193.3632 ONLY AUTHORIZES
ENFORCEMENT OF AN ASSESSMENT
LIEN THROUGH THE TAX CERTIFICATE
AND TAX DEED PROCESS OUTLINED IN
CHAPTER 197.

BECAUSE THE FINANCING AGREEMENT
ATTACHED TO THE MASTER BOND
RESOLUTION INCLUDED AS AN
EXHIBIT TO THE COMPLAINT, AND
VALIDATED IN THE FINAL JUDGMENT,
INCLUDED JUDICIAL FORECLOSURE AS
AN ALTERNATE REMEDY TO ENFORCE
THE ASSESSMENT, THE FINAL
JUDGMENT OF THE CIRCUIT COURT
VALIDATING THE BOND MUST BE
REVERSED.

AND THIS--

>> THIS ARGUMENT YOU'RE MAKING
NOW WAS MADE IN THE, BEFORE THE
TRIAL COURT?

>> NO, YOUR HONOR, IT WAS NOT.
THIS, THIS ARGUMENT WAS RAISED
FOR THE FIRST TIME ON APPEAL,
CONSISTENT WITH THE PROVISIONS
OF CHAPTER 75 AND THE HOLDING OF
THIS COURT IN MYERS VERSUS CITY
OF ST. CLOUD.

>> THAT IS, THAT EVEN THOUGH YOU
DIDN'T PARTICIPATE IN THE TRIAL
COURT PROCEEDINGS YOU CAN
PARTICIPATE ON APPEAL?

>> CORRECT.

>> AND SO, AND IF THAT'S THE
CASE, ARE YOU LIMITED AT ALL IN
WHAT KIND OF ISSUES YOU CAN
RAISE BEFORE THIS COURT?
OR, EVEN THOUGH YOU DIDN'T
PARTICIPATE, YOU CAN RAISE
NEGATIVE AT ALL THAT YOU WANT TO
BEFORE THE COURT?

>> WELL, CLEARLY THIS COURT IS NOT IN A POSITION TO DO FACT-FINDING.

SO I THINK THAT THE ISSUES THAT WOULD BE RAISED ON APPEAL WOULD BE LIMITED STRICTLY TO LEGAL ISSUES AND WOULD HAVE TO BE DIRECTLY RELATED TO THE VALIDITY OF THE BONDS OR THE AUTHORITY OF THE ISSUING BOND OR THE LEGALITY OF THE UNDERLYING DOCUMENT.

>> I DON'T UNDERSTAND THOUGH. FORGETTING ABOUT WHETHER YOU PARTICIPATED, I DON'T UNDERSTAND HOW WE CAN CONSIDER AN ISSUE ON APPEAL THAT'S NEVER BEEN RAISED BELOW?

THAT IS SORT OF, THAT IS CONTRARY TO EVERY THEORY OF APPELLATE LAW, UNLESS, UNLESS THERE IS FUNDAMENTAL-- EVEN THERE, YOU HAVE TO, MOST EVERYTHING HAS TO BE RAISED. HOW DOES THAT HAPPEN IN THIS TYPE OF PROCEEDING.

>> JUSTICE PARIENTE IT IS IMPORTANT TO RECOGNIZE THAT CHAPTER 75 IS A VERY UNIQUE STATUTE.

IT PROVIDES FOR THE OPPORTUNITY AT LOWER COURT LEVEL AND ALSO ON APPEAL.

SO IT CAN NOT BE VIEWED IN THE SAME PARADIGM AS TRADITIONAL APPEALS THAT COME BEFORE THIS COURT.

ONE OF THE FACTORS, FOR EXAMPLE, UNDER CHAPTER 75 YOU BYPASS THE DISTRICT COURTS OF APPEAL AND COME DIRECTLY TO THE SUPREME COURT.

THIS COURT'S HOLDING IN MYERS VERSUS CITY OF ST. CLOUD, CLEARLY RECOGNIZED THERE ARE TWO PATHS TO GET BOND VALIDATION ISSUES BEFORE THIS COURT.

THE COURT RECOGNIZED YOU COULD PARTICIPATE AS PART OF PROCEEDINGS BELOW.

AND EVEN IF YOU DID NOT, THIS IS

THE CLEAR HOLDING IN THE MYERS CASE, EVEN IF YOU DID NOT PARTICIPATE IN THE PROCEEDING BELOW YOU HAVE THE RIGHT TO RAISE ISSUES RELATED TO THE THREE UNIQUE FACTORS CONSIDERED IN BOND VALIDATION PROCEEDING CONSIDERED IN THIS COURT.

SO I THINK--

>>> LET ME ASK YOU THIS. HOW CAN THE REASONING IN MEYERS SCARED IN THE TEXT OF THIS STATUTORY SCHEME?

WE DO HAVE TO READ THEM TOGETHER, DON'T WE.

>> YOU DO.

>> WHEN YOU LOOK AT THOSE ALL TOGETHER, IT SEEMS TO ME, IT'S QUITE CLEAR THAT WHAT IS ANTICIPATED IS THAT PEOPLE ARE GOING TO SHOW UP IN COURT AND ANSWER THE COMPLAINT AND PARTICIPATE.

NOW BACK WHEN MEYERS WAS DECIDED THERE WAS THE OPPORTUNITY FOR PEOPLE TO INTERVENE AFTER THE DATE THAT WAS SET.

THAT IS NO LONGER IN THE STATUTE BUT I'M NOT SURE, THAT CHANGE IN THE STATUTE REALLY MAKES ANY DIFFERENCE.

IF YOU, IF YOU LOOK AT THIS WHOLE STATUTE, HOW CAN WHAT THEY DECIDED THEN, AND I REALIZE, THEY DECIDED WHAT THEY DECIDED BUT HOW CAN IT BE RECONCILED WITH THE TEXT OF THE STATUTE?

>> I THINK IT CAN VERY EASILY, JUSTICE CANDY.

I THINK IF YOU LOOK AT THE STATUTE AND YOU LOOK AT THE PROVISIONS REGARDING APPEAL, THE PROVISION IS IN 75.08.

IN 75.08 IT PROVIDES A BASIS FOR AN APPEAL FOR A PLAINTIFF, FOR A DEFENDANT, OR FOR AN INTERVENOR. THE PROVISION THAT'S CITED BY THE DISTRICT IN ITS BRIEF REALIZE UPON 75.07 WHICH ONLY

DEALS WITH INTERVENTION.
SO IF YOU LOOK AT THE PROVISION
IN '07, IT TALKS ABOUT YOU BEING
ABLE TO INTERVENE IN A CIRCUIT
COURT PROCEEDINGS BUT THE
SEPARATE PROVISION IN 75.08--
>> WHEN YOU SAY IT ONLY, 75.07
ONLY DEALS WITH INTERVENTION,
THE HEADING SAYS INTERVENTION,
BUT THE TEXT REFERS TO ANY
PROPERTY OWNER, TAXPAYER,
CITIZEN OR PERSON INTERESTED MAY
BECOME A PARTY TO THE ACTION BY
MOVING AGAINST OR PLEADING TO
THE COMPLAINT AT OR BEFORE THE
TIME SET FOR HEARING.

YOU DIDN'T DO THAT.

>> WELL, NO, WE DID NOT BUT I
THINK, THAT PROVISION IN '07
RELATES TO YOUR ABILITY TO
INTERVENE IN THE CIRCUIT COURT
PRESCRIPTION.

THE 08 DEALS WITH THE ABILITY TO
PARTICIPATE AS APPELLANT.

ANY PLAINTIFF, DEFENDANT, ANY
INTERVENOR WHICH IS HOW YOU GO
INTO THE CASE UNDER 07 HAS THE
RIGHT TO FILE AN APPEAL.

>> LET ME ASK YOU THIS IN
RELATED QUESTION, IF UNDER THE
LAW IN FLORIDA, IF YOU HAD
PARTICIPATED IN THE PROCEEDING
BELOW, YOU KNOW, YOU ANSWERED
AND YOU WENT THROUGH, YOU
PARTICIPATED AS ORDINARILY THE
CASE, COULD YOU NOW COME HERE
AND RAISE AN ISSUE THAT YOU HAD
FAILED TO RAISE IN THE TRIAL
COURT?

>> I, I BELIEVE YOU COULD,
JUSTICE CANDY.

I BELIEVE-- CANADY.

>> SO THIS IS JUST A
FREE-FOR-ALL?

>> I DON'T THINK THAT IS THE
CASE.

YOU HAVE TO RECOGNIZE THAT THE
CHAPTER 75 PROCEEDING IS
INTENDED TO BE A UNIQUE METHOD
TO VALIDATE THE BOND AND SO IN

THAT INSTANCE, THE PROCESS IS
OPTIONAL.

THERE IS NO REQUIREMENT THAT THE
DISTRICT SEEK THE JUDICIAL
IMPRIMATUR ON THE BONDS IT IS
ISSUING.

THEY COME TO THIS COURT FOR A
SEAL OF APPROVAL THIS BOND ISSUE
MEETS ALL THE LEGAL
REQUIREMENTS.

AND SO I THINK THAT THE ONLY
ISSUE THAT COULD BE RAISED IN
THE SITUATION THAT YOU'RE
TALKING ABOUT WOULD BE, YOU
KNOW, VERY LIMITED RELATED TO
THE THREE PARTICULAR ISSUES THAT
COME UP IN A BOND VALIDATION
CASE WHICH ARE DISCUSSED IN YOUR
DECISIONS IN MICCOSUKEE TRIBE
AND THE MURPHY CASE.

THERE IS ONLY THREE ISSUES.
DOES THE ISSUING AGENCY HAVE THE
AUTHORITY, DOES IT MEET ALL THE
LEGAL REQUIREMENTS, AND THOSE
ARE THE ONLY ISSUES THAT CAN BE
ADDRESSED AND THOSE ARE CLEAR,
YES, NO, ANSWERS.

AND IT HAS TO BE DIRECTLY
RELATED TO THAT AND IT'S
IMPORTANT THAT THIS COURT HAVE
AN OPPORTUNITY TO ADDRESS
SPECIFIC PROBLEMS THAT ARE
IDENTIFIED EITHER AT THE TRIAL
COURT LEVEL OR BEFORE THIS COURT
THAT RELATE TO THE LEGALITY OF
THE ISSUES THAT ARE INVOLVED IN
THE BOND DOCUMENTS.

AND I THINK THAT IS WHAT THE
CITY OF, I MEAN THE MEYER IS
VERY CITY OF ST. CLOUD CASE
UNIQUE NATURE OF THIS PROCESS,
COURT ESSENTIALLY SAYING, YES,
THIS MEETS ALL THE REQUIREMENTS.
IF THERE IS SOMETHING WRONG YOU
HAVE THE OPPORTUNITY TO BRING
THIS, NOT THROUGH THE DISTRICT
COURT OF APPEAL.

YOU HAVE A RIGHT TO BRING IT
BEFORE THIS COURT.

THAT IS EXACTLY WHAT MY CLIENT

DOES.

>> WHAT ARE THE ISSUES THAT YOU CAN RAISE ACTUALLY AT THE TRIAL COURT LEVEL?

IT SEEMS TO ME, THAT YOU WOULD BE DOING THE SAME THING AT THE TRIAL COURT LEVEL.

YOU ARE QUESTIONING WHETHER THEY HAVE THE AUTHORITY TO ISSUE THE BONDS.

YOU WOULD BE QUESTIONING WHETHER OR NOT YOU GOT THE PROPER NOTICE OR, THE PROPER NOTICE WAS GIVEN TO, I MEAN YOU WOULD BE DOING THE SAME KINDS OF THINGS AT THE TRIAL COURT LEVEL, IS THAT NOT CORRECT?

>> THAT'S CORRECT.

I THINK YOU WOULD.

>> SO WHY IN THE WORLD, IF YOU HAVE THAT OPPORTUNITY, AND IN EVERY OTHER LEGAL SITUATION YOU NEED TO EXERCISE THAT OPPORTUNITY, BEFORE YOU TAKE IT ANOTHER STEP, YOU'RE SAYING IN THIS SITUATION, YOU DON'T HAVE TO TAKE THAT INITIAL STEP AND WE WILL JUST, YOU COULD IN FACT RAISE ANY ISSUE INVOLVING BOND VALIDATION THAT YOU COULD HAVE RAISED IN THE TRIAL COURT LEVEL HERE?

>> WELL I THINK ONE OF THE REASONS WHY THAT IT'S DIFFERENT IN THIS CHAPTER 75 PROCEED SOMETHING BECAUSE OF THE CONSTRUCTIVE NOTICE PROVISIONS THAT ARE BUILT INTO THE STATUTE. IN OTHER WORDS, AN ISSUING AGENCY IS GIVEN A VERY UNIQUE OPPORTUNITY TO NAME EVERY CITIZEN IN THE COUNTY AS A DEFENDANT AND THAT GOES BACK TO JUSTICE CANADY'S QUESTION BEFORE.

IN THIS INSTANCE, ESSENTIALLY WHAT IS HAPPEN SOMETHING THAT THE ISSUING AGENCY IS SUING EVERY TAXPAYER IN LEON COUNTY IN ORDER TO TAKE, GET THE ADVANTAGE

OF THE REPOSE PROVISIONS WHICH ARE IN 75.09.

SO ONCE THE VALIDATION IS ISSUED, AND ONCE IT IS AFFIRMED ON APPEAL, IF IT IS APPEALED, THERE IS A PROVISION IN 75.09 THAT PROVIDES--

>> IF I COULD TAKE YOU BACK TO 75.05, WHICH YOU MADE REFERENCE TO, THE PROVISION THAT IS TO GIVE THIS CONSTRUCTIVE NOTICE. BUT, INTEGRAL TO THAT TEXT PORTION OF THE STATUTORY TEXT IS THAT NOTICE IS GIVEN TO ALL THESE FOLKS TO APPEAR AS A, AT A DESIGNATED TIME AND PLACE, WITHIN THE CIRCUIT, WHERE THE COMPLAINT IS FILED AND SHOW WHY THE COMPLAINT SHOULD NOT BE GRANTED AND PROCEEDINGS AND BONDS OR CERTIFICATES VALIDATED. I MEAN SO THAT, THAT CLEARLY CONTEMPLATES THAT THE PEOPLE WHO GET THE CONSTRUCTIVE NOTICE, IF THEY HAVE GOT A PROBLEM AND THEY WANT TO PLAY IN THIS GAME, THEY GOT TO SHOW UP AND CAN'T SHOW UP ON, FILING A NOTICE OF APPEAL AFTER ALL OF THE TRIAL PROCEEDINGS HAVE TAKEN PLACE. WHY DOESN'T THIS PROVISION THAT I HAVE JUST READ CUT AGAINST YOUR ARGUMENT?

>> BECAUSE THAT PROVISION BASICALLY STATES THAT ALL OF THE TAXPAYERS BECOME DEFENDANTS IN THE ACTION AND WHEN YOU READ THAT, IN 75.08 GIVES EVERY DEFENDANT THE OPPORTUNITY TO FILE AN APPEAL, I THINK WHAT THE LEGISLATURE INTENDED TO DO, GIVEN CONSTRUCTIVE NOTICE AND EXPEDITED NATURE OF THESE PROCEEDINGS, YOU HAVE A RIGHT TO COME IN AND PARTICIPATE IN CIRCUIT COURT.

IF YOU FIND OUT BECAUSE OF THE CONSTRUCTIVE NOTICE PROVISIONS THAT THERE IS A SIGNIFICANT

LEGAL ISSUE WITHIN THE TIME FOR APPEAL YOU CAN BRING THAT TO THIS COURT AND ASK THIS COURT--

>> ISN'T THAT TWO DIFFERENT THINGS TO ME?

I STILL DON'T UNDERSTAND WHAT IT IS THAT WOULD ALLOW, SAY THERE WERE CONSTRUCTIVELY A DEFENDANT TO ALLOW SOMEBODY CONSTRUCTIVELY WHO WAS A DEFENDANT BUT WASN'T THERE, TO RAISE AN ISSUE THAT WASN'T RAISED IN THE TRIAL COURT?

IF IT WAS, IF YOU WERE AN ACTUAL DEFENDANT COULD YOU JUST COME UP WITH ANY OTHER ISSUE THAT YOU WANTED TO ARGUE ON APPEAL IN THIS, IN A BOND VALIDATION?

>> WELL I THINK WHAT THE STATUTE, THE PROVISION THAT JUSTICE CANADY WAS SEEKING OR CITING SAYS, YOU ARE ACTUALLY A PARTY TO THE PROCEEDING.

YOU KNOW BY BEING NAMED THROUGH THE CONSTRUCTIVE NOTICE.

>> I AM STILL STRUGGLING WITH THIS WASN'T AN ISSUE RAISED, THIS IS ABOUT JUDICIAL FORECLOSURE, RIGHT?

WE'RE NOT TALKING ABOUT ANY OTHER ASPECT OF THESE BONDS, WHETHER THERE IS JUDICIAL FORECLOSURE THAT IS IMPERMISSIBLE THAT IS YOUR ARGUMENT AND YOU SAY YOU RAISED IT IN OTHER CASES SO WHY DO YOU GET AROUND THE BAR, IF IT WASN'T RAISED IN THE TRIAL COURT, YOU CAN RAISE IT FOR THE FIRST TIME ON APPEAL?

>> AND AGAIN I GO BACK TO I THINK THE PROVISION, I GO BACK TO THIS COURT'S HOLDING IN MEYER VERSUS CITY OF ST. CLOUD WHICH SAYS THERE ARE TWO AVENUES TO BRING LEGAL ISSUES TO THIS COURT AS IT RELATES TO BOND VALIDATION.

ONE IS THE PARTICIPATE IN THE PROCEEDINGS BELOW.

THE OTHER IS TO TRIAL DIRECT
APPEAL IF YOU'RE ONE OF THE
PARTIES THAT QUALIFIES TO FILE
AN APPEAL UNDER 7508.

>> I'M NOT SURE THAT ANSWERS THE
QUESTION IF YOU HAD APPEARED IN
THE CIRCUIT COURT AND YOU DID
NOT RAISE THE ISSUE NOW BEFORE
THIS COURT AND YOU FILE AN
APPEAL, COULD YOU RAISE THE
ISSUE THAT'S NOW BEFORE THIS
COURT?

>> WELL, JUSTICE QUINCE, I'M
SORRY--

>> HAVING APPEARED THERE, CAN
YOU DO THAT?

THAT IS THE QUESTION.

>> THAT QUESTION IS NOT BEFORE
YOU TODAY BECAUSE THAT IS THE
NOT CIRCUMSTANCE BUT IN RESPONSE
TO YOUR QUESTION I BELIEVE YOU
COULD AND I BELIEVE YOU COULD
BECAUSE AGAIN--

>> SO ALL THE APPELLATE RULES
ABOUT PRESERVING AND ALL THAT
ARE OUT OF THE WINDOW?

A BOND VALIDATION PROCEEDING.

>> I THINK THAT'S CORRECT.

I THINK CHAPTER 75 IS A UNIQUE
VEHICLE AND IT GOES BACK, THIS
IS AN OPTIONAL PROCESS.

MY CLIENT DIDN'T ASKED TO BE
NAMED AS A DEFENDANT IN THE
LAWSUIT.

HE WAS NAMED AS A DEFENDANT IN
THE LAWSUIT.

UNDER THE STATUTE HE HAS A RIGHT
TO BRING BEFORE THIS COURT
QUESTIONS THAT ARISE AS TO THE
LEGAL, THE REAL AUTHORITY AND
THE LEGAL VALIDITY OF THE BONDS
AND THE DOCUMENTS THAT WERE
ATTACHED TO THE COMPLAINT AND
THAT ARE SOUGHT TO BE VALIDATED.
THE FINAL JUDGMENT IN THIS CASE
THAT WAS ISSUED VALIDATES THE
FINANCING AGREEMENT WHICH
INCLUDES THE JUDICIAL
FORECLOSURE REMEDY AND THAT, I
THINK, IS ONE OF THE REASONS WHY

WE HAVE TO COME FORWARD NOW AND
BRING TO YOUR ATTENTION THAT--

>> WHAT IS THE REMEDY?

I ASSUME YOU WANT THE WHOLE
PROCEEDING TO START OVER?

IS THERE ANYTHING SHORT OF THAT
THAT IS A POSSIBLE REMEDY?

>> I DO NOT BELIEVE SO, NOT IN A
CHAPTER 75 PROCEEDING.

I THINK, IN A CHAPTER 75
PROCEEDING, AGAIN OPTIONAL FOR
THE DISTRICT TO SEEK VALIDATION
IF THEY WANT TO DO SO.

IF THEY DO SO, THEY COME TO THIS
COURT AND THEY ASK FOR A SEAL OF
APPROVAL THAT WHAT THEY HAVE
DONE IS LEGALLY CORRECT.

IF IT IS NOT LEGALLY CORRECT,
THEN THEY HAVE TO GO BACK AND DO
THE PROCESS OVER.

THIS IS NOT A WORKSHOPPING
PROCESS.

>> SO WHAT DOES THE FINAL
JUDGMENT IN THIS CASE SAY?
YOU ARE SAYING IT INCLUDES THE
JUDICIAL FORECLOSURE?

>> THE FINAL JUDGMENT IN THIS
CASE VALIDATES THE FINANCING
AGREEMENT WHICH WAS ATTACHED TO
THE COMPLAINT, WHICH WAS
ATTACHED TO THE MASTER BOND, I
MEAN, MASTER BOND RESOLUTION.
SO THE FINAL JUDGMENT VALIDATES
THAT, AND GOING BACK TO THE
STATUTE OF REPOSE IN 75.09, IF
YOU LOOK AT THAT, THERE IS A
SPECIFIC PROVISION IN THERE THAT
SAYS, ONCE THE JUDGMENT BECOMES
FINAL AFTER APPEAL, ALL ASPECTS,
INCLUDING THE COLLECTION
MECHANISMS FOR THE BONDS ARE
BEYOND CHALLENGE EVER AGAIN.
SO AS A RESULT OF THAT THE
REPOSE, THERE IS A, AN
ESTABLISHED CONCLUSION THAT
JUDICIAL FORECLOSURE AS LISTED
IN THE FINANCING AGREEMENT IS AN
ACCEPTABLE REMEDY AND THAT IS
JUST NOT CORRECT AS A MATTER OF
LAW.

>> YOU'RE DEEP INTO YOUR
REBUTTAL.
>> THANK YOU.
>> COUNSEL.
>> MAY IT PLEASE THE COURT.
MY NAME IS HERB THIELE.
I'M COUNTY ATTORNEY HERE IN LEON
COUNTY AND ACT AS GENERAL
COUNSEL TO THE SPECIAL DISTRICT.
I HAVE ELLIE NEIBERGER WHO ALSO
REPRESENTS THE DISTRICT AND
CHIEF ASSISTANT STATE ATTORNEY
GEORGIA CAPPLEMAN WHO IS
REPRESENTING THE STATE OF
FLORIDA.
YOUR HONORS, THIS CASE IS A LOT
MORE SIMPLE THAN THE OTHER
MATTERS ON YOUR DOCKET EARLIER
TODAY THAT HAD NUANCES AND ALL
KIND OF COMPLICATED FACTS.
YOU CAN UPHOLD THE VALIDITY OF
THESE BOND BY AFFIRMING THE
FINAL JUDGMENT IN THREE WAYS AND
THAT'S, SO YOU HAVE OPTIONS IF
YOU WOULD.
THE FIRST AND FOREMOST OF WHICH
IS THAT THE FINANCING AGREEMENT
WHICH IS BEING ATTACKED BY THE
APPELLANT HERE IS VALID.
IT IS NOT AN ATTEMPT TO RUN
AROUND THE END OF THE PACE
STATUTE, 163.08.
IF YOU LOOK IN ALL OF THE
DOCUMENTS WHICH WERE SUBMITTED
BEFORE THE TRIAL COURT, YOU WILL
FIND THAT THE FINAL JUDGMENT
SPECIFICALLY SAYS THAT THE
ASSESSMENTS, REMEMBER THIS IS
PROPERTY ASSESSED CLEAN ENERGY
IS THE CONCEPT, THAT THE
ASSESSMENTS IN THIS MATTER ARE
TO BE COLLECTED USING THE
UNIFORM METHOD, THAT'S THE
CHAPTER 197 METHOD.
IT SAYS NOTHING ABOUT
FORECLOSURE.
IF YOU LOOK IN THE MASTER
RESOLUTION WHICH WAS ADOPTED BY
THE DISTRICT THAT AUTHORIZES THE
BONDS, IT TOO SAYS THAT THE

ASSESSMENTS ARE TO BE MADE UNDER 163.08 AND COLLECTED USING THE UNIFORM METHOD.

AND IF YOU LOOK IN THE FINANCE AGREEMENT ITSELF, IT SAYS THAT THE COLLECTION WILL BE UTILIZED THROUGH 197.

>> BUT THE FINANCE AGREEMENT ALSO SAYS SOMETHING ABOUT JUDICIAL FORECLOSURES, CORRECT?

>> IT DOES, YOUR HONOR AND HERE'S, WHAT WE BELIEVE THAT MEANS.

THAT SOME DAY, IN THE FUTURE, THESE LIENS LAST 10 TO 15 TO 20 YEARS SOMETIMES.

IF THE FLORIDA LEGISLATURE TAKES AWAY THE AUTHORITY TO DO SPECIAL ASSESSMENTS AND COLLECT USING THE UNIFORM METHOD UNDER 197, THERE WOULD BE A CONTINGENT, IF YOU WOULD, REMEDY.

BUT IT IS NOT A REMEDY WHICH WE CAN PUT INTO A DOCUMENT AND OVERCOME THE STATUTES AS THE THEY'RE PRESENTLY WRITTEN.

IT IS A--

>> IS THAT THE WORDING, THAT REFERS TO JUDICIAL FORECLOSURES? THE WORDING IN THE FINANCE AGREEMENT, IS THAT THE WORDING?

>> NO.

IT DOES NOT SAY THAT SPECIFICALLY BUT WHAT IT DOES SAY IS THAT THE METHODOLOGY OF COLLECTION OF THESE ASSESSMENTS MUST BE BUY THE UNIFORM METHOD IN CHAPTER 197.

SO IT CLEARLY DIRECTS ANYONE WHO LOOKS AT ANY OF THOSE DOCUMENTS INCLUDING THE VALIDATION JUDGMENT, THAT THAT'S THE WAY WE HAVE TO COLLECT THESE ASSESSMENTS.

NO OTHER WAY.

SOME DAY, MAYBE, IT'S A CONTINGENCY BUT IT DOESN'T ALLOW TO US DO THAT NOW AND THEREFORE, THE FINANCE AGREEMENT IS VALID. THEREFORE THE MASTER RESOLUTION

IS VALID AND THEREFORE, THE FINAL JUDGMENT THAT THE CIRCUIT COURT LOOKED AT INCLUDING ALL OF THOSE DOCUMENTS IS LIKEWISE VALID.

>> I WANT TO ASK SORT OF A QUESTION FROM THE POINT OF VIEW OF THE COUNTY AND THE STATE. ONCE THESE BONDS, THERE ARE SEVERAL WAYS BONDS COULD HAVE BEEN UPHELD OF THE IF THERE HAD BEEN NO APPEAL, THE FINAL JUDGMENT WOULD HAVE BEEN IN PLACE BUT YOU'VE ASKED THAT THE, THERE BE A MOTION TO STRIKE AND THAT THE BRIEFS BE STRICKEN AND BASICALLY THEN THE APPEAL DISMISSED.

IF THERE IS ANY ISSUE THAT JUDICIAL-- YOU'RE SAYING THAT THEIR ARGUMENT THAT JUDICIAL FORECLOSURE IS PROVIDED FOR HAS NO MERIT, CORRECT?

>> YES, CORRECT.

>> AND REALIZING AGAIN THAT, HOW, ISN'T, FOR THE STABILITY OF THE BOND BETTER TO BE A AFFIRMING THE JUDGMENT AND A SPECIFIC STATEMENT THAT THERE IS NO JUDICIAL FORECLOSURE PROVIDED FOR SO THAT THERE ISN'T ANY QUESTION ABOUT THE LIQUIDITY OF THE BOND?

>> THE--

>> AND MAYBE THAT IS JUST, AND I, I THINK AGAIN, I DON'T UNDERSTAND HOW WE HAVE A RULE ALLOWS SOMEONE TO BRING UP, EVEN IF THEY WERE A PARTY, SOMETHING NOT RAISED BELOW.

BUT THAT THEN IS A PROCEDURAL THING THAT DOESN'T REALLY ANSWER THIS SORT OF LINGERING QUESTION AS TO WHETHER THAT JUDICIAL FORECLOSURE IS PROVIDED FOR IN THE BONDS?

>> IT IS CERTAINLY THE DISTRICT'S PREFERENCE, IF YOU WOULD, THAT THIS COURT UPHOLD THE FINAL JUDGMENT ON THE BASIS

THAT THIS IS, I DON'T WANT TO
USE THE WORD RED HERRING BUT
THIS IS A NON-THING.

THAT THE FACT THAT IT MENTIONS
JUDICIAL FORECLOSURE IS A BACKUP
PLAN, A REMEDY NOT IN EXISTENCE
AT THE PRESENT TIME AND THAT THE
COURT WAS AWARE OF THAT.

THAT THE COURT SPECIFICALLY IN
THE FINAL JUDGMENT SAID, YOU
HAVE TO COLLECT THIS USING 197.

>> YOU SAY THAT BUT YOU FILED A
MOTION TO STRIKE AND DISMISS THE
APPEAL.

>> WITH OTHER CONTINGENCIES,
YOUR HONOR.

THAT WAS MY THREE-PART PLAN HERE
THIS MORNING.

ONE WAS YOU VALIDATE THE BOND
BECAUSE THE ISSUES RAISED BY THE
APPELLANT HAVE NO MERIT.

THAT ALL THE DOCUMENTS
DIRECT CLEARLY DIRECT US AND
LIMIT US TO THE UNIFORM METHOD
OF COLLECTION.

>> ISN'T THAT THE FROM THE POINT
OF VIEW FROM THE COUNTY THE BEST
OPTION.

>> YES, YES, WITHOUT QUESTION IN
MY MIND.

YOU HAVE OPTION TWO, OPTION TWO
IS, THAT THIS APPELLANT LACKS
STANDING TO RAISE THIS ISSUE
BECAUSE THE MEYER S CASE, THE
WORDING DOESN'T EXIST ANYMORE.
MISS NEIBERGER WILL TALK MORE
ABOUT STANDING HERE IN A MINUTE.
BACK UP PLAN TWO THIS APPELLANT
LACKS STANDING TO RAISE THAT
ISSUE BECAUSE HE FAILED TO
APPEAR AS HE WAS DULY NOTICED IN
THE ORDER TO SHOW CAUSE AND
INTERVENE AT OR BEFORE THE ORDER
TO SHOW CAUSE HEARING, THE BOND
VALIDATION PROCEEDING.

HE NEVER SHOWED UP.

AND I AGREE WITH THE ARGUMENT
THAT, THAT RUNS-- I DON'T
BELIEVE THE VALIDATION STATUTE,
WHILE A SPECIFIC DIFFERENT SORT

OF A METHODOLOGY, THAT THAT THEREFORE, REPEALS ALL OF THE RULES OF APPELLATE PROCEDURE THAT WE'VE ALL LEARNED OVER THE YEARS WHICH IS, IF YOU DON'T RAISE IT, YOU WAIVE IT.

AND IN THIS CASE THEY DIDN'T RAISE IT AT THE LOWER TRIBUNAL AND WANT YOU TO ACCEPT ISSUES LIKE STANDING, LIKE I'M A CITIZEN, I'M A TAXPAYER, ALL OF WHICH REQUIRED NO PROOF AT THE TRIAL COURT LEVEL.

THE THIRD IS--

>> IF WE RULE THAT WAY THERE IS NO IMPAIRMENT TO THE VALIDITY OF THE BOND ANYWAY.

YOU STILL HAVE A FINAL JUDGMENT APPROVING THE BOND, RIGHT?

>> THAT'S CORRECT, YOUR HONOR. WE STILL HAVE A VALID FINAL JUDGMENT, YES.

THE THIRD ONE I JUST WANT TO MENTION IS THE MOTION TO STRIKE AND TO DISMISS WHICH WE FILED. LET ME JUST TOUCH ON THAT A LITTLE BIT HERE.

AS THE COURT KNOWS YOU REMANDED CASE BACK, YOU RELINQUISHED JURISDICTION BACK TO THE TRIAL COURT WHEN WE FILED A MOTION TO DISQUALIFY TWO COUNSEL WHO CAME IN AT THE 11th HOUR.

OUR POSITION IS, WHEN THAT DISQUALIFICATION HAPPENED, DURING THE DISCOVERY PHASE ON THE MOTION TO DISQUALIFY THAT WAS CONDUCTED BY THE CIRCUIT COURT HERE, WE DISCOVERED SIGNIFICANT EVIDENCE THAT IS ATTACHED TO OUR MOTION THAT IT WAS NOT JUST THE FILING OF THE NOTICE OF APPEAL, THAT THE DISQUALIFIED LAWYERS IN THIS CASE WERE THE LAWYERS IN THIS CASE.

THAT THEY, THEY, THEY REVIEWED THE RECORD.

THEY PREPARED THE NOTICE OF APPEAL.

THEY PREPARED THE RETENTION AGREEMENT.

THEY ARRANGED FOR APPELLANT'S COUNSEL TO BE PAID.

THEY DRAFTED THE INITIAL BRIEF.

>> THEY ALSO, FROM WHAT YOU'RE SAYING, THEY FLAT-OUT LIED? I MEAN ISN'T, AS I LOOK AT THIS, I MEAN, WE'RE REALLY TALKING TO ME, ABOUT SOME BAR GRIEVANCE ISSUES.

IF YOU'RE CORRECT ON ALL OF THIS, HOW DOES THAT GET, ASSUMING IT HAS STANDING AND ASSUMING THERE WAS SOME VALIDITY, HOW WAS THAT MISCONDUCT BECAUSE THE LAWYER HERE SAYS, NO, I SIGNED THE BRIEF, AND I HAD AN OBLIGATION, IT WAS MY BRIEF?

HOW SHOULD THAT BE VISITED ON THE INDIVIDUAL CLIENT BY STRIKING THE BRIEFS AND DISMISSING THE APPEAL?

>> IN THIS INSTANCE THE WORK PRODUCT OF THE DISQUALIFIED LAWYERS IS TAINTED.

IT IS TAINTED BY THE SAME CONFLICT OF INTEREST THAT THEY HAD IN TRYING TO REPRESENT THE APPELLANT HERE AT ORAL ARGUMENT. THE SHEDDER CASE AT THE FOURTH DIRECT WE LIKE TO USE THE PHRASE, AN ATTORNEY MAY NOT DO SOMEONE ELSE THAT WHICH THEY COULDN'T DO THEMSELVES.

>> THOSE ARE, YOU KNOW, STANDARD, GOOD PRINCIPLES BUT THE CONSEQUENCES OF THAT, I MEAN SEEM TO ME TO BE, I MEAN YOU COULD REALLY TURN LOOSE SOME BAD CIRCUMSTANCES IF YOU HAVE A CLIENT THAT TRIES TO USE A LAWYER AND IT COMES UP TO THE EVE OF THE PROCEEDING AND THAT LAWYER IS DISQUALIFIED AND THERE'S NOT TIME FOR SOMEONE ELSE TO COME IN AND REFLOW THE FIELD TO SAY THAT THAT PERSON WHAT, JUST GETS NO

REPRESENTATION?

THOSE ARE THE CONSEQUENCES OF SOMETHING THAT IN ONE CASE IS, IT MAY LEAVE TERRIBLE PROBLEMS DOWN THE ROAD BECAUSE WE DO, FROM TIME TO TIME, HAVE CONFLICTS THAT THE COURTS HAVE TO ADDRESS.

BUT TO LEAVE A PARTY WITHOUT REPRESENTATION AT ALL, UNLESS WE'RE SAYING THAT THE PARTY IS GUILTY OF SOME KIND OF, ILLEGAL CONDUCT, WHAT IS YOUR RESPONSE TO THAT?

>> YOUR HONOR, MY RESPONSE IS THAT, WE'RE NOT SAYING THAT THE PARTY IS AT FAULT.

WE'RE, OUR ARGUMENT IS THAT THE PARTY MUST SUFFER, IF YOU WOULD, THE CONSEQUENCES OF THEIR CHOICE.

IF I HIRE A LAWYER WHO HAS A CONFLICT, AND THAT'S DISCOVERED, THEN I HAVE AN OBLIGATION TO REPLACE THEM AND THAT DIDN'T HAPPEN HERE.

EXCEPT THROUGH MR. MENTON. OUR ARGUMENT IS, WE HAVE NO QUARREL WITH MR. MENTON, OTHER THAN THE DOCUMENTATION WHICH WAS PRODUCED IN THIS CASE WAS TAINTED BY THE CONFLICT OF THE LAWYERS WHO--

>> IF YOU CAN'T USE THAT THEN THERE IS NOTHING TO PRESENT. IT IS, THAT'S MY POINT.

AND SO THEN IN OUR SYSTEM WOULD SAY, IS THAT WHOEVER THE CLIENT IS, THEY SUFFER THE CONSEQUENCES OF THIS AND WHAT DO THEY DO? THEY HAVE TO GO SUE THE LAWYER WHO IS IN CONFLICT OR SOMETHING, IS THAT THE WAY THE SYSTEM IS GOING TO WORK?

>> YES, SIR.

I SEE MY TIME IS UP.

THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT. MY NAME IS HE WILY NEIBERGER. I WILL ADDRESS THE STANDING

ISSUE FOR THE DISTRICT.
THIS APPEAL SHOULD BE DISMISSED
FOR LACK OF UNDERSTANDING
BECAUSE MR. REYNOLDS DIDN'T
APPEAR AT TRIAL LEVEL AND BOND
VALIDATION STAT SHEETS DON'T
ALLOW HIM TO APPEAR AND RAISE
OBJECTIONS FOR FIRST TIME ON
APPEAL TO THIS COURT.

>> IS OUR PRECEDENT THOUGH,
WHETHER IT IS BAD PRECEDENT OR
NOT, ALLOW IT?

>> YES.

MY YES, SIR SQUARELY-- MEYERS
CLEARLY HOLDS THAT.

>> ARE THERE TWO SUBSEQUENT
CASES THAT HOLD THERE.

>> THERE ARE NOT TWO SUBSEQUENT
ISSUES SQUARELY LIKE MEYERS DID.
THERE WERE TWO CASES DECIDED IN
1996 AND IN NEITHER OF THEM,
STANDING WAS NOT CHALLENGED.

>> SEEMS TO ME, MY CONCERN IS,
THIS WHOLE IDEA, EVEN IF YOU
HAVE, IF YOU CAN APPEAR FOR THE
FIRST TIME ON APPEAL, I DON'T
KNOW HOW YOU CAN RAISE AN ISSUE
THAT WASN'T RAISED BELOW.
COULD YOU JUST, DOES MYERS ALLOW
THAT?

THAT NOT ONLY YOU CAN APPEAR
BEFORE THE SUPREME COURT EVEN IF
YOU DIDN'T APPEAR IN THE TRIAL
COURT AND YOU CAN RAISE ANY
ISSUE THAT YOU WANTED TO RAISE?

>> MEYERS DOES NOT ADDRESS THAT.
MEYERS OPINION WAS A OPINION ON
RULING ON MOTION TO DISMISS.

>> REALLY ISN'T THAT, FIRST OF
ALL FOR PRECEDENT, SOMETHING
GOING FORWARD, IT DOESN'T, I
THINK, I'M VERY SYMPATHETIC TO
YOUR POSITION LEGALLY.

I THINK THOUGH WE LEARNED WITH
STRAND WE ALWAYS HAVE TO BE
CAREFUL ABOUT WHAT WE DO WHEN WE
RECEDE FROM PRECEDENT.

IT SEEMS TO ME THAT THAT'S MAYBE
GOING FORWARD, BUT WHY WOULDN'T
THIS, IF THERE ISN'T ANY

PRECEDENT ON, YOU CAN'T RAISE SOMETHING FOR THE FIRST TIME ON APPEAL, WHY WOULDN'T THAT BE A, AT LEAST, AGAIN YOU HAVE ABOUT FOUR WAYS YOU COULD PROBABLY WIN THIS CASE, SO IT IS JUST A QUESTION WHICH WAY YOU WANT TO WIN IT.

>> RIGHT.

SO MEYERS I THINK CAN BE--

>> I DON'T KNOW, MAYBE THREE.

>> MEYERS CAN BE DISTINGUISHED BECAUSE IT DIDN'T INVOLVE SOME OF THE ISSUES WE RAISED HERE WHICH IN MEYERS IT WAS ACCEPTED THAT THE APPELLANTS WERE TAXPAYERS, PROPERTY OWNERS, CITIZENS WHO WOULD HAVE HAD STANDING TO COME IN AND APPEAR AT THE TRIAL LEVEL.

HERE WE HAVE NOT CONCEDED THAT. THERE ARE ISSUES OF WHETHER MR. REYNOLDS WOULD HAVE BEEN ABLE TO COME IN AND STEP IN AS A TAXPAYER PROPERTY OWNER, CITIZEN AS THIS COURT HAS DEFINED THOSE TERMS WHICH MEANS A TAXPAYER, PROPERTY OWNER OR CITIZEN. SOMEBODY WHO ACTUALLY OWNS THE PROPERTY OR ACTUALLY LIVES HERE WHO WOULD ALSO ADVERSELY AFFECTED BY THE BOND VALIDATION JUDGEMENT.

THOSE ARE QUESTIONS, FACTUAL DETERMINATIONS THAT THIS COURT DOESN'T MAKE.

THIS COURT'S ROLE IS TO REVIEW, YOU KNOW, LEGAL QUESTIONS THAT HAVE BEEN DECIDED AT THE TRIAL LEVEL.

IT IS NOT TO, IN OUR POSITION IT IS NOT TO ADHERE LEGAL QUESTIONS IN THE FIRST INSTANCE AND IT IS CERTAINLY NOT TO RESOLVE FACTUAL QUESTIONS.

AND TO ALLOW SOMEBODY WHO COULD HAVE APPEARED BELOW AND WHO RECEIVED THE PROPER NOTICE, WHICH THIS COURT HAS REPEATEDLY UPHELD ON DUE PROCESS GROUNDS,

TO COME IN AND SAY, WE'LL, WE'RE JUST GOING TO SKIP OVER THE FACTUAL DETERMINATION THAT THE DISTRICT OR WOULD HAVE HAD THE OPPORTUNITY TO, YOU KNOW, CONTEST AT THE TRIAL LEVEL, THEN NOBODY WOULD APPEAR AT THE TRIAL LEVEL.

IT WOULD BE ESSENTIALLY A FREE-FOR-ALL.

>> NOW, YOU CONCEDE MEYERS IS SOMEWHAT PROBLEMATIC FOR YOUR POSITION BUT ISN'T IT ALSO THE CASE THAT MEYERS REALLY GAVE SHORT-SHRIFT TO EXISTING PRECEDENT, THAT WAS THERE WHEN MEYERS WAS DECIDED?

>> RIGHT.

MEYERS DID RELY ON, I BELIEVE THE SARASOTA COUNTY CASE AND THE SARASOTA COUNTY CASE DID NOT ADDRESS THIS, PARTICULAR ISSUE OF WHETHER SOMEBODY WHO DIDN'T APPEAR COULD COME IN AND FILE AN APPEAL.

SARASOTA DEALT WITH THE PERSONAL JURISDICTION ASPECT OF 75.06.

>> BUT DOESN'T MEYERS REALLY COLLIDE, IS IT WILLIAMSON?

THAT IS WHAT I WAS SAYING.

THAT IS THE ONE WHERE IT SEEMS LIKE, I'M HAVING TROUBLE RECONCILING THAT.

NOW THEY TRIED TO KIND OF FLICK IT AWAY.

>> RIGHT.

>> YOU BUT IT SEEMS LIKE TO ME THEY NEVER REALLY, SERIOUSLY DEAL WITH WHAT WILLIAMS SON ACTUALLY SAYS.

CORRECT WILLIAMSON.

>> I THINK THE DISSENT IN MEYERS POINTS THAT OUT.

>> I THOUGHT YOU WOULD AGREE WITH THAT.

>> ABSOLUTELY.

THE DISSENT POINTS THAT OUT AND STRANGE DISTINCTION MADE IN THE WILLIAMSON CASE.

MY TIME IS UP.

IF I LIKE, NO FURTHER STATE
QUESTIONS, HAVE THE STATE
ATTORNEY HAVE THEIR TIME.
THANK YOU.

>> MAY IT PLEASE THE COURT.
GEORGIA CAPPLEMAN FOR THE STATE.
I'M THE CHIEF ASSISTANT STATE
ATTORNEY HERE IN THE SECOND
JUDICIAL CIRCUIT AND PURSUANT TO
CHAPTER 75 I HAVE THE
DISTINGUISHED ON NOR OF-- HONOR
OF APPEARING ON BEHALF OF STATE
IN THESE BOND VALIDATION
MATTERS.

I'VE DONE THAT FOR ABOUT THE
LAST FIVE YEARS OR SO AND DID IN
THIS CASE.

PRIMARILY MY ROLE, WHEN I AM
SERVED WITH A COMPLAINT IS TO
REVIEW THE COMPLAINT FOR THE
THREE MAJOR FACTORS THAT HAVE
BEEN DISCUSSED WITH YOUR HONORS
ALREADY, IS THE ENTITY SEEKING
TO ISSUE THE BOND, AUTHORIZED TO
DO SO, ARE THESE BOND FOR A
VALID PUBLIC PURPOSE, AND DO THE
BOND COMPLY WITH THE
REQUIREMENTS OF LAW, PRIMARILY
HOW ARE THEY TO BE REPAYED.

I REVIEWED THIS BOND COMPLAINT
IN THIS CASE AND DETERMINED THAT
THERE WERE NO ISSUES WITH IT.
I DID NOT NOTICE THE FORECLOSURE
LANGUAGE AT THAT TIME.

I WENT TO THE HEARING WHICH WAS
CONDUCTED AND THAT ISSUE WAS NOT
RAISED AT THE HEARING EITHER BY
ANY PARTY NOR THE JUDGE.

SO, IT WASN'T UNTIL THE ISSUE
WAS RAISED ON APPEAL THAT THE
FORECLOSURE LANGUAGE WAS BROUGHT
TO MY ATTENTION.

I THINK YOU'RE HEARING A CASE
TOMORROW WHERE THE FORECLOSURE
LANGUAGE WAS ADDRESSED AT THE
HEARING AND IN THAT CASE THE
JUDGE ELECTED TO STRIKE THAT
LANGUAGE BECAUSE AS IN THIS
CASE, ALL PARTIES AGREED
FORECLOSURE WAS NOT CURRENTLY A

LEGAL REMEDY AND IT WAS NOT TO BE SOUGHT UNLESS THAT POSTURE CHANGED.

BASED ON THAT THE JUDGE SUGGESTED STRIKING THAT LANGUAGE AND ALL PARTIES AGREED TO DO SO THERE.

BUT BASED UPON THE REPRESENTATIONS FROM MR. THIELE IN THIS CASE I AM COMFORTABLE AS THE STATE, THAT THE FORECLOSURE IS NOT SOMETHING THAT COULD BE PURSUED.

EVERYONE SEEMS TO AGREE, ON, AS MR. MENTON PUT IT, THE CENTRAL AND ONLY QUESTION IN THE CASE WHICH IS, IS FORECLOSURE AN APPROPRIATE REMEDY?

EVERYONE SAYS NO.

THAT SEEMS LIKE AN OPEN-AND-SHUT CASE TO ME.

SO FROM MY PERSPECTIVE AS THE STATE, IN THIS CASE I STILL SEE NO REASON WHY THE BONDS SHOULD NOT BE UPHELD AND I WOULD ASK YOUR HONORS TO UPHOLD THE VALIDATION.

>> WELL, WHAT HAPPENS 15 YEARS FROM NOW?

YOU'RE RAISING YOUR FAMILY AND THERE IS SOMEONE ELSE STANDING THERE ON BEHALF OF THE STATE AND POINTING TO DOCUMENTS THAT INCLUDE THE RIGHT TO JUDICIAL FORECLOSURE AND SAY, I HAVE A DIFFERENT VIEW?

THAT THIS IS ALREADY BEEN NOW AFFIRMED.

THIS IS A STRANGE POSTURE WHEN A COURT'S BEING ASKED TO, AS I'M HEARING THE ARGUMENTS ON THIS, IS TO AFFIRM SOMETHING THAT EVERYBODY IS STANDING BEFORE US SAYING THIS IS NOT RIGHT?

>> WELL, IT SAYS, ALL LEGAL REMEDIES INCLUDING BUT NOT LIMITED TO FORECLOSURE.

SO-- IT DOES TAKE A LITTLE PARSING TO DETERMINE IT IS ALL LEGAL REMEDIES TO DETERMINE IF

IT IS LEGAL FORECLOSURE.
SO I THINK THAT'S OKAY.
I'M NOT WORRIED THAT ANYONE
WOULD MISINTERPRET THAT AND TRY
TO TAKE SOMEBODY'S HOME.
>> THE WHOLE PROCESS HERE AND
SHORT CIRCUITING GOING THROUGH
DC.
AS IS TO GET CERTAINTY WITH
REGARD TO FINANCIAL MATTERS,
ISN'T IT?
THAT IS THE PURPOSE OF ALL THIS?
>> YES.
>> LET'S PRETEND THAT IS NOT
THERE, I'M HAVING TROUBLE WITH
THAT.
>> I THINK--
>> AT LEAST IT OUGHT TO BE
REMOVED, AT THE BEST, SEEMS TO
ME.
I MEAN EVERYBODY SAYS YEAH, WELL
THAT DOESN'T MATTER YET WE'RE
SEEING ARGUMENTS, JUST LEAVE
EVERYTHING AS IT IS.
IT'S A STRANGE ARGUMENT FOR A
SUPREME COURT TO HEAR.
DEFECT TESTIFY BUT LET IT
THROUGH ANYWAY.
>> I DON'T THINK IT IS
DEFECTIVE.
I THINK IT IS SAYING ALL LEGAL
REMEDIES, IF THAT IS LEGAL
REMEDY WE WANT TO PURSUE IT IN
THE FUTURE.
THIS DOCUMENT IS PROSPECTIVE IN
NATURE.
I'M COMFORTABLE WITH THAT.
IF THIS COURT ISN'T I'M EQUALLY
COMFORTABLE WITH STRIKE THE
LANGUAGE.
I JUST DON'T THINK IT IS
FAIR TO HAVE THE WHOLE PROCESS
START OVER AGAIN.
>> I HEAR.
THAT I FULLY UNDERSTAND THAT.
IF IT IS NOT RIGHT, WE'RE TRYING
TO SHORT-CIRCUIT SOMETHING THAT
HAS, AT LEAST ARGUABLY SOME
ISSUES WITH IT.
>> I THINK THAT IS ARGUABLE.

>> YEAH.
>> THANK YOU.
>> NOW.
>> THANK YOU.

FIRST OF ALL, ON ISSUE OF CONTINGENT REMEDY, LET ME JUST POINT OUT AGAIN THAT BECAUSE OF THE NATURE OF THIS PROCEEDING INVOLVING BOND, THESE BOND ARE GOING TO BE SOLD TO THE PUBLIC. SO THE FINANCING AGREEMENT, THE FINAL JUDGMENT HERE, SPECIFICALLY STATES THAT THE FINANCING AGREEMENT IS VALIDATED.

THE BOND PURCHASERS DON'T KNOW THAT THIS IS A CONTINGENT REMEDY.

THERE IS NOTHING IN THERE THAT DISCLOSES THAT.

THAT IS ONE OF THE REASONS WHY IT IS IMPORTANT THAT THIS COURT, AS IT ATTACHES A JUDICIAL SEAL OF APPROVAL TO THESE BOND DOCUMENTS, THAT THEY HAVE TO BE CORRECT.

OKAY?

NOW--

>> ARE YOU SAYING BECAUSE, YOU DIDN'T RAISE IT BELIEF, AND YOU RAISED IT HERE, FOR THE FIRST TIME THAT IS OKAY AND WE CAN CORRECT THE PROBLEM?

>> AND AGAIN I THINK IT GOES BACK TO THE CHAPTER 75--

>> NO, CAN WE CORRECT THE PROBLEM, SINCE YOU BROUGHT IT TO US AND DIDN'T BRING IT BELOW.

>> NO I DON'T THINK SO.

>> IT IS OKAY TO SKIP THAT STEP, COME HERE WITH SOMETHING NEW YOU DIDN'T RAISE AND WE'RE ACTING AS A FIRST IMPRESSION?

>> I THINK WHAT YOU'RE ACTING AS YOU ANSWER THREE QUESTIONS OUTLINED IN THE MICCOSUKEE TRIBE.

THAT'S ARE NOT WHAT IF QUESTIONS.

THOSE ARE YES OR NO QUESTIONS.

DO THE DOCUMENTS THAT WERE
SUBMITTED MEET ALL THE LEGAL
RIGHTS.

THE ANSWER TO THAT IS NO.
SO WHAT THEY HAVE TO DO IS GO
BACK AND FOLLOW THE EXPEDITED
CHAPTER 75 PROCESS AND GET IT
RIGHT.

THAT IS WHAT CHAPTER 75 IS ALL
ABOUT.

IF YOU COME INTO THE PROCESS,
YOU'RE ASKING THE COURTS, THE
COURT SYSTEM, TO SAY THAT WHAT
DONE IS COMPLETELY LEGAL.
AND IF IT'S NOT, YOU HAVE TO GO
BACK AND GET IT RIGHT AND THEN
THE COURT SAYS YES OR NO.

>> THAT IS THE WHOLE ISSUE
THOUGH.

YOU HAVE TO GO BACK TO WHERE?
TO THE CIRCUIT COURT?

>> YOU HAVE TO REVERSE THE FINAL
JUDGMENT AND APPROVING THE BONDS
AND THEN CAN GO BACK AN CORRECT
ISSUE.

>> GO BACK WHERE?
TO THE CIRCUIT COURT?

>> I THINK THEY HAVE TO START
THE VALIDATION PROCESS OVER.
THEY HAVE TO CORRECT THE
DOCUMENTS AND THEY HAVE TO START
THE VALIDATION PROCESS OVER.

>> WHY WOULD THEY HAVE TO DO
BACK AN START EVERYTHING OVER
AND WHY COULD NOT A TRIAL JUDGE
ENTER AN AMENDED ORDER, VACATE
THE FINAL JUDGMENT AND ENTER AND
A PROPER FINAL JUDGMENT THAT
TAKES OUT SOMETHING THAT IS
ILLEGAL?

>> I THINK THERE'S, THERE IS DUE
PROCESS ISSUES RELATED TO THE
CONSTRUCTIVE NOTICE.

IF YOU LOOK AT THE PUBLICATION
THAT IS PUT OUT, TO START THE
VALIDATION PROCESS, THERE IS A
SPECIFIC REFERENCE TO THE
COMPLAINT AND THE ATTACHMENTS
AND THE FINANCING AGREEMENT.
THAT'S THE NOTICE THAT IS SENT

OUT.

THERE IS NOT A TRADITIONAL--
>> THE NOTICE THAT SAID YOU'RE
REQUIRED TO GO BY CERTAIN DATE
AND SHOW CAUSE WHY THEY SHOULD
NOT BE ISSUED?

>> RIGHT.

>> OKAY.

THAT IS NOTICE.

>> PUBLICATION IS IN THERE AND
IT REFERENCES THROUGH A COMPLAINT
AND THE COMPLAINT ATTACHES
SPECIFIC EXHIBITS TO IT.

>> BUT, OKAY, ANY CHANCE TO SHOW
UP.

THEY DIDN'T SHOW-- COT TRIAL
JUDGE HAVE ENTERED A CORRECT
JUDGMENT IN THIS CASE WITHOUT
THIS APPEAL?

, A VALID JUDGMENT BY SAYING,
NO, I'M NOT GOING TO LEAVE IN
THE JUDICIAL FORECLOSURE
LANGUAGE?

>> I THINK AGAIN, I THINK THE
ISSUE BEFORE THE COURT IS, ARE
YES, NO, QUESTIONS.

DO THESE DOCUMENTS MATTER.

>> COULD YOU ANSWER MY QUESTION.
I UNDERSTAND.

SO YOU'RE SAYING UNDER THIS
PROCESS, THAT A TRIAL JUDGE
COULD NOT HAVE ON THE FINAL DAY,
WHEN EVERYTHING IS BEING
PRESENTED COULD NOT HAVE RULED
THAT'S NOT CORRECT, THE JUDICIAL
FORECLOSURE, THEREFORE I'M
REMOVING THAT PART BUT I'M
AFFIRMING, OUI I'M ENTERING
JUDGMENT.

>> THOSE ISSUES ARE COMING
BEFORE YOU IN--

>> I'M JUST ASKING THAT
QUESTION.

YOU'RE SAYING NO THEY COULD NOT?

>> I DON'T BELIEVE THEY CAN.

I DON'T THINK THAT IS THE NATURE
AFTER CHAPTER 75 PROCESS.

>> THAT IS SAYING THAT A TRIAL
JUDGE CAN'T DO ANYTHING BECAUSE
SOMEBODY CAN COME OUT OF THE

WOODWORK LATER AND NEVER RAISE ANY KIND OF POSITION IN THE TRIAL COURT, AND, THAT TRIAL JUDGE HAS NO POWER, NO JURISDICTION, TO ENTER A PROPER JUDGMENT IS WHAT YOU'RE SAYING?

>> THE TRIAL COURT HAS JURISDICTION TO ENTER A JUDGMENT, THAT YES, THESE MEET REAL REQUIREMENTS OR NO, THEY DO NOT.

THAT IS THE NATURE OF THE CHAPTER 75 PROCESS.

THERE ARE RELATED CASES COMING BEFORE YOU THAT RAISE THAT EXACT ISSUE.

JUST ON THAT POINT, I SEE MY TIME'S OVER AND I WOULD BE HAPPY TO RESPOND TO ANY OTHER QUESTIONS THAT YOU HAVE.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.

>> THE COURT IS IN RECESS UNTIL TOMORROW MORNING AT 9:30.