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## McKenzie Check Advance v. Wendy Betts

THE LAST CASE ON THIS MORNING'S CALENDAR IS McKENZIE CHECK ADVANCE OF FLORIDA VERSUS BETTS. I AM RECUSED ON THIS CASE SO JUSTICE WELLS WILL PRESIDE.

MISS TOWNES, I THINK YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT, I AM VIRGINIA TOWNES OF AKERMAN, SENTERFITT APPEARING ON BEHALF OF NATIONAL CASH ADVANCE. I BELIEVE I'VE NOTIFIED THE COURT THAT I WOULD LIKE TO RETAIN FIVE MINUTES FOR REBUTTAL. WE ARE HERE BEFORE THE COURT TODAY ON CERTIFIED CONFLICT. THE 4TH DCA CERTIFIED CONFLICT WITH THE 5TH DCA ON THE ISSUE OF WHETHER THE 1994 VERSION OF CHAPTER 560, THE DEFERRED PRESENTMENT, I'M SORRY, THE MONEY TRANSMITTERS CODE, AUTHORIZED DEFERRED PRESENTMENT TRANSACTIONS. THE 5TH DCA SAID, YES, IT DID AS REGULATED BY THE DEPARTMENT OF BANKING THROUGH PROMULGATED RULES. THE 4TH DCA SAID NO. IN REACHING THAT DECISION, THE 4TH DCA ERRED IN THREE WAYS. IT IGNORED THE PLAIN LANGUAGE OF THE STATUTE. IT SUBSTITUTED ITS JUDGMENT FOR THAT OF THE DEPARTMENT

WHAT ARE WE TALKING ABOUT WHEN WE ARE TALKING ABOUT A DEFERRED PRESENTMENT?

IT IS A FORM OF SMALL LOAN THAT IS MADE BY ME.

WHAT WAS THE FORM?

OKAY. AN INDIVIDUAL, A CONSUMER COMES INTO A PAYDAY LENDER, WRITES A CHECK, SIGNS A CONTRACT. THE CHECK IS MADE FOR THE AMOUNT OF THE FACE AMOUNT OF MONEY THE PERSON WANTS PLUS THE STATUTE ORE FEES WHICH INCLUDE 10% OF THE FACE AMOUNT OF THE CHECK, PLUS A VERIFICATION FEE. THAT CHECK IS HANDED OVER TO THE PERSON WHO IS RECEIVING CASH FOR THE AMOUNT OF CASH THE PERSON WANTED TO RECEIVE. THAT CHECK IS HELD FOR WHATEVER TERM IS ON THE CONTRACT, TYPICALLY TWO WEEKS, AND THEN ONE OF TWO THINGS CAN HAPPEN. THE PERSON COMES BACK TO THE CHECK CASHING STORE AND REDEEMS THE CHECK.

WELL, THE INSTRUMENT THAT IS SIGNED, THE CHECK, BUT IT IS ACTUALLY A NOTE, ISN'T IT? I MEAN, I AM HAVING A VERY DIFFICULT TIME WITH THIS JARGON HERE OF PRE-PRESENTMENT AND HOW THAT DIFFERS FROM A LOAN. IT IS JUST A LOAN.

YOUR HONOR, I WON'T QUESTION THAT. IT IS A FORM OF A LOAN, BUT IT IS ALSO A CHECK CASHING AS DEFINED UNDER AND REGULATED BY THE MONEY TRANSMITTERS.

DO WE HAVE A SITUATION HERE IN WHICH BOTH THE USURY STATUTE AND THE TRANSMITTAL STATUTE CAN BE READ TO APPLY TO THIS TRANSACTION?

I DON'T BELIEVE SO, YOUR HONOR, AND HERE'S HERE'S WHY. FIRST OF ALL THE USURY STATUTE ITSELF I BELIEVE IT IS 689.12 RECOGNIZES THAT THE STATUTE WON'T APPLY TO OTHER STATUTE ORE REGULATIONS. THAT THE LEGISLATURE CAN CARVE EXCEPTIONS OUT OF THE STATUTE. WE ALSO

DOES THIS STATUTE SPECIFICALLY EXCLUDE THE APPLICATION OF THE USURY STATUTE?

I BELIEVE IT DID, YOUR HONOR, THOUGH NOT IN THOSE WORDS. IF YOU ASK ME TO POINT TO THAT LANGUAGE I WILL NOT BE ABLE TO DO SO, BUT WHAT IT DID WAS DEFINE WHAT IS CHARGED AS A FEE, AND IT SETS THE CAP ON THOSE FEES. AND IT DOESN'T MATTER WHETHER THE CHECK IS GIVEN AND DEPOSITED IMMEDIATELY OR GIVEN AND HELD FOR TWO WEEKS. THAT FEE STAYS THE SAME. THAT'S A FUNCTION LIKE INTEREST.

IS THERE A SEPARATE ISSUE CONCERNING ROLLOVER TRANSACTIONS? DO WE HAVE TO CONSIDER NOT ONLY DOES IT AUTHORIZE DEFERED PRESENTMENT BUT DOES IT ALSO AUTHORIZE THE ROLLOVER TRANSACTIONS?

I THIS THAT'S WHERE THAT'S WHERE WE GET INTO THE AGENCY STATUTE, YOUR HONOR. I AM SPEAKING OF THE 1994 STATUTE BECAUSE THE 2001 STATUTE SPEAKS SPECIFICALLY TO A ROLLOVER.

AND THE AGENCY HAS SAID, MY UNDERSTANDING BOTH THAT DEFERED PRESENTMENT TRANSACTIONS ARE OKAY AND THAT ROLLOVER TRANSACTIONS ARE NOT?

WELL, CORRECT, BUT LET ME HELP WITH THE TIMING OF THAT. WHAT HAPPENED WAS THE STATUTE WAS ENACTED, ADOPTED IN 1994. THE DEPARTMENT PROMULGATES RULES, AND THE DEPARTMENT ALSO HAS WHAT WHEN I TOOK APA IT IS INCIPIENT AGENCY POLICY. THERE IS NOTHING IN THE STATUTE AS THE 5TH DCA RECOGNIZED THAT SAYS WHAT HAPPENS TO THAT CHECK AFTER IT IS GIVEN TO THE CHECK CASHING STORE. AT THAT POINT A CHECK CASHING AS DEFINED BY THE STATUTE IS COMPLETE AND THAT TRANSACTION IS REGULATED. THE 5TH DCA, I AM SO SORRY, THE DEPARTMENT OF BANKING LATER SAID WE ARE SEEING A PROBLEM HERE, AND IN THE EXERCISE OF OUR DELEGATED LEGISLATIVE AUTHORITY, WE ARE GOING TO STOP ROLLOVERS. IT DIDN'T ENACT A RULE BUT IT SENT A LETTER OF GENERAL GUIDANCE TO THE CHECK CASHIERS WHO WERE REGISTERED UNDER PART 3 OF CHAPTER 560 SAYING WE RECOGNIZE DEFERED PRESENTMENTS ARE AUTHORIZED UNDER 560. WE DON'T WANT TO SEE ROLLOVERS. SO UNLESS THE CHECK IS REDEEMED FOR CASH OR DEPOSITED, YOU MAY NOT EXTEND THAT TRANSACTION. THAT HAS NOT BEEN A REGULATION ON THE BOOKS PRIOR OR WAS NOT EVEN PROMULGATED BY THE DEPARTMENT FORMALLY OR INFORMALLY AT THE BEGINNING OF THE EFFECTIVE DATE OF THE STATUTE. WHAT HAD HAPPENED IN OUR CASE WAS, IN NATIONAL'S CASE, WAS THAT THE DEPARTMENT HAD COME IN AND DONE AN AUDIT AND SAID THIS IS GOING TO BE OUR POLICY. STOP DOING THIS. SO ALTHOUGH THE LETTER DIDN'T COME OUT UNTIL MAY 5TH OF 1998, AS OF DECEMBER 31, 1997, NATIONAL HAD COMPLIED WITH THE GUIDANCE IT RECEIVED FROM THE DEPARTMENT. LONG ANSWER TO YOUR QUESTION. TWO DIFFERENT ISSUES.

RIGHT. AND ARE YOU ARGUING THAT THE 1994 STATUTE AUTHORIZES ROLLOVER TRANSACTIONS?

I'M ARGUING IT DIDN'T PROHIBIT. THAT THERE WAS NO GUIDANCE IN THAT STATUTE THAT WOULD HAVE PUT A MONEY TRANSMITTER, A CHECK CASHIER ON NOTICE THAT IT COULD NOT ENGAGE. ONCE THE DEPARTMENT EXERCISED ITS AUTHORITY TO SAY DON'T DO IT, I DON'T DRAW THE DISTINCTION PERSONALLY IN ADVISING MY CLIENTS ON WHETHER IT IS FORMAL OR INFORMAL.

HELP ME OUT.

YES, YOUR HONOR.

IN A SIMPLE VERSION, IF I COME TO YOU AND I SAY I'VE GOT A CHECK WOULD YOU CASH IT, THAT MEANS I HAND YOU THE CHECK AND YOU GIVE ME CASH. NOW, LET'S COMPLICATE IT WITH THE LAW. HOW IS CHECK CASHING DEFINED?

CHECK CASHING IS DEFINED IN, WELL, A CHECK CASHIER IS DEFINED IN SECTION 56103 AS A

PERSON WHO FOR COMPENSATION SELLS CURRENCY IN EXCHANGE FOR PAYMENT INSTRUMENT. THAT'S THE STATUTE OR DEFINITION THAT BRINGS YOU STATUTORY DEFINITION THAT BRINGS YOU UNDER THIS REGULATION AND THAT'S WHAT A PAYDAY LENDER DOES. ONCE YOU ARE UNDER CHAPTER 560 YOU ARE REQUIRED TO LIVE UP TO THE OBLIGATION BUT YOU ARE ALSO ENTITLED TO THE PROTECTION OF THAT STATUTE. SO WHEN THE LEGISLATURE HAS ACTED TO DEFINE A TERM THAT TAKES IT OUT OF THE COMMON PARLANCE, I BELIEVE, YOUR HONOR. AT ANY RATE, THE COMMON THE PLAIN LANGUAGE OF CHAPTER 560 DID TWO THINGS. IT CLEARLY BROUGHT CHECK CASHING, DEFERRED PRESENTMENT TRANSACTIONS WITHIN THE AMBIT OF THE STATUTE, WHICH TAKES IT OUT OF THE USURY STATUTE, DEFINES THE FEE SO LONG AS YOU ARE ONLY CHARGING THOSE FEES YOU ARE OUTSIDE USURY, AND IT SAYS THE DEPARTMENT OF BANKING WILL REGULATE THE REST OF THIS.

I'D LIKE TO GO BACK TO A QUESTION THAT I THINK JUSTICE WELLS ASKED BEFORE. HOW DO YOU DISTINGUISH WHAT GOES ON IN THESE TRANSACTIONS FROM A LOAN?

THEY ARE A SPECIES OF LOANS, YOUR HONOR. I AM NOT GOING TO ARGUE THEY ARE NOT. BUT THEY ARE ALSO A CHECK CASHING UNDER 560.

SO IF THEY ARE A SPECIES OF LOAN, WHY ARE THEY NOT THEN SUBJECT TO THE USURY STATUTE?

TWO REASONS. FIRST OF ALL, 689.12 MAKES THE STATEMENT THAT THIS DOESN'T EXTEND FOR THE LEGISLATURE HAS CREATED ANOTHER CONSTRUCT. ALSO THE BASE BASIS

WHAT EXACTLY DOES THAT MEAN, ANOTHER CONSTRUCT OF HOW YOU CAN CHARGE INTEREST?

CORRECT. AND THE PROBLEM WE HAVE WITH THAT IS THE LEGISLATURE CALLED THESE FEES NOT INTERESTED. OPPOSING COUNSEL CALLS THEM INTEREST FOR PURPOSES OF THIS ARGUMENT. I SAY THEY ARE FEES, THEY ARE STATUTORY FEES, THEY ARE NOT INTEREST BUT EVEN IF THEY WERE, THERE IS THAT PREACCEPT PRECEPT OF STATUTORY CONSTRUCTION THAT SAYS THE NEWER CONTROLS OVER THE OLDER, THE SPECIFIC CONTROLS OVER THE GENERAL AND YOU WILL FIND THE CASE THAT IS SUPPORTING THAT ON PAGE 11 OF OUR BRIEF IN FOOTNOTE 7. SO WHEN THE LEGISLATURE ENACTED 560 IT IS PRESUMED TO HAVE KNOWN OF THE EXISTENCE OF THE USURY STATUTE. IT WAS PRESUMED TO HAVE KNOWN WHAT THE FEES WERE BEING CHARGED FOR, AND IT CLEARLY SPOKE TO A SPECIFIC TYPE OF TRANSACTION.

AND IS IT SAFE TO SAY IN ORDER TO BENEFIT FROM THE PROTECTIONS OF 560, A CHECK CASHIER HAS TO COMPLY WITH ALL OF THE REQUIREMENTS OF 560 AND IF IT OFFERS ANY FEES IN EXCESS OF THE AUTHORIZED FEES UNDER THE STATUTE, THEN IT FALLS UNDER THE USURY STATUTE?

THAT'S ABSOLUTELY FAIR TO SAY. THAT'S WHAT THE ATTORNEY GENERAL SAID JUSTICE BUTTERWORTH ISSUED A REQUEST OF THE COMPTROLLER OF THE STATE OF FLORIDA. HE MADE EXACTLY THAT ANALYSIS AND I THINK YOU WILL FIND THAT ATTORNEY GENERAL'S OPINION HELPFUL. HE WENT THROUGH THE ENTIRE USURY ANALYSIS LOOKING AT THE SUBSTANCE RATHER THAN FORM, LOOKING AT WHAT HAPPENS RATHER THAN LANGUAGE AND HE CAME DOWN TO CHAPTER 560 AND THE DEPARTMENT'S REGULATION OF THESE LOANS, AND SAID SO LONG AS YOU WERE DOING THIS UNDER THE PURVIEW, UNDER THE RULES THE WAY THE DEPARTMENT SAYS YOU CAN DO IT WITHOUT VIOLATING THE STATUTE, IT IS NOT A USURIOUS LOAN.

WHAT ABOUT THE 4TH DISTRICT'S CONCLUSION, THOUGH, THAT IF THE 1994 VERSION OF THIS ACT WAS INTENDED TO COVER THIS TYPE OF TRANSACTION THAT IT SAYS AS DISCUSSED ABOVE DEFERED PAYMENT TRANSACTIONS WERE NOT CONTEMPLATED IN THE FRAMEWORK OF SELLING AND EXCHANGING PAYMENT INSTRUMENTS. FURTHER SUPPORT OF THIS CONCLUSION IS THE FACT THAT IN AMENDING THE CODE, THE LEGISLATURE ADDED A SEPARATE AND DISTINCT PART TO THE CODE.

I THINK WITH GREAT RESPECT TO THE 4TH DCA, IT MISUNDERSTOOD THE PRECEPTS OF STATUTORY CONSTRUCTION HERE. YOU LOOK AT THE PLAIN LANGUAGE, CHECK CASHING, CHECK CASHIER. IT IS SO BROAD AS TO INCLUDE DEFERED PRESENTMENT TRANSACTIONS. THERE IS NO ARGUMENT THAT DEFERED PRESENTMENT TRANSACTIONS WERE NOT REQUIRED TO BE REGISTERED. WHAT THE 2001 LEGISLATION DID

LET ME ASK YOU THIS: IF I ENTERED INTO ONE OF THESE TRANSACTIONS, COULD I GO AND IMMEDIATELY CASH THE CHECK?

AND YOU ARE THE

I AM THE PERSON THAT GAVE JUSTICE ANSTEAD THE MONEY AND HE GAVE ME A CHECK.

YOU ARE A PAYDAY LENDER.

COULD I GO IMMEDIATELY AND CASH THAT CHECK?

DEPENDS ON THE CONTRACT YOU HAVE WITH JUSTICE ANSTEAD.

BUT AS FAR AS THE INSTRUMENT ITSELF IS CONCERNED, CAN I DO THAT?

YES. I MEAN, IT IS A CHECK. IT IS IN FORM A NEGOTIABLE INSTRUMENT, A CHECK. IT IS THE AGREEMENT NOT TO DO THAT THAT KEEPS YOU FROM DOING IT AND THAT'S AUTHORIZED UNDER 3C5. 560.803.

SO IT IS NOT THE CHECK THAT'S COVERED BY THIS STATUTE. IT IS THE AGREEMENT THAT I HAVE ENTERED INTO WITH JUSTICE ANSTEAD THAT HE IS NOT GOING TO GET HIS MONEY BACK FOR X NUMBER OF DAYS?

I ACTUALLY DON'T AGREE WITH THAT, SIMPLY LOOKING ONCE AGAIN AT THE PLAIN LANGUAGE OF THE STATUTE. THE STATUTE REGULATES THE ACTIVITY OF GIVING CURRENCY FOR A PAYMENT INSTRUMENT. THAT IS WHAT MAKES YOU A CHECK CASHIER. THAT IS WHAT MAKES YOU REGISTER UNDER 560. THAT IS WHAT SUBJECTS YOU TO THE REGULATION BY THE DEPARTMENT OF BANKING, AND THAT'S WHAT ALLOWS THE DEPARTMENT OF BANKING TO MAKE THE REGULATION. AS THIS COURT SAID IN

SO IF YOU ACCEPT YOUR DEFINITION, EVERY CONVENIENCE STORE, EVERY DEPARTMENT STORE OR ANYBODY WILLING TO CASH A CHECK HAS TO REGISTER UNDER THIS? IT IS NOT THE CONTRACT BUT IT IS JUST THE TRANSACTION?

IF YOU ARE USING IT FOR COMPENSATION.

WELL, THAT'S THE ISSUE.

UNDER THE STATUTE, CORRECT.

THE ISSUE IS CASHING IT FOR COMPENSATION?

CORRECT, AND THAT COMPENSATION ONCE AGAIN IS THE FEE. NOW, WHAT HAS HAPPENED HERE IS THAT WE HAVE A FULLY

TO ANSWER HIS QUESTION, SO IF A BANK CHARGES YOU \$2 BECAUSE YOU DON'T HAVE AN ACCOUNT THERE, IS THAT COVERED?

THEY ARE SPECIFICALLY EXEMPT FROM THE STATUTE, YOUR HONOR. THERE ARE NUMEROUS

EXEMPTIONS. WHAT HAPPENED WAS THAT WHEN THE LEGISLATURE ENACTED THE STATUTE, IT MADE THAT DEFINITION OF WHAT IS A CHECK CASHIER AND IT MADE TWO EXEMPTIONS. FOREIGN WITHDRAWN PAYMENT INSTRUMENTS, AND TRAVELERS CHECKS. AND UNDER THE RULE OF EXCLUSIO<sup>A</sup>ONIOUS WE KNOW THAT THE LEGISLATURE HAD NOT MADE ANY OTHER EXCLUSIONS, THEREFORE DEFERED PRESENTMENT TRANSACTIONS WERE NOT EXCLUDED AND THAT TAKES ME BACK TO THE REST OF YOUR QUESTION, JUSTICE WELLS. WHAT THE 2001 AMENDMENT DID WAS WHAT HAPPENS IN THE EVOLUTION OF ALL REGULATION? THE LEGISLATURE SAW THAT THESE TRANSACTIONS WERE AUTHORIZED, THE DEPARTMENT WAS ALLOWING THEM AND RECOGNIZED THE NEED FOR FURTHER CONSUMER REGULATORY PROTECTION. SO ACTUALLY THE NEW PART OF THE STATUTE, PART 4, IS NOT NEW IN THE SENSE THAT IT AUTHORIZES THESE TRANSACTIONS FOR THE FIRST TIME. IT IS ONLY NEW IN THAT IT CARVES DEFERED PRESENTMENT TRANSACTIONS OUT OF THE LARGER SET OF CHECK CASHING AND IMPOSES ADDITIONAL LIMITATIONS.

YOU ARE IN YOUR REBUTTAL TIME IF YOU WANT TO SAVE YOUR TIME.

OKAY. THANK YOU, YOUR HONOR.

MR.<sup>A</sup>CASPER?

MAY IT PLEASE THE COURT, CHRISTOPHER CASPER, ALONG WITH CLAY AKES AND RICHARD FISHER ON BEHALF OF THE RESPONDENT, WENDY BETTS. LET'S LOOK AT THE AGREEMENT IN THIS CASE AND WHAT IT SAYS. THE AGREEMENT PLAINLY STATES THAT THE CONSIDERATION FOR THE FEES CHARGED IS NATIONAL CASH ADVANCE'S AGREEMENT NOT TO DEPOSIT THE CHECK FOR TWO WEEKS. THAT'S A LOAN. THAT IS NOT A CHECK CASHING TRANSACTION. THE AGREEMENT DOESN'T SAY WE WILL EXCHANGE CURRENCY FOR PAYMENT INSTRUMENT. IT SAYS, WE WILL GIVE YOU MONEY AND YOU WILL PAY US BACK MONEY PLUS 10% IN TWO WEEKS. THAT'S CLEARLY A LOAN AND YOU ARE NOT GOING TO SEE ANYTHING.

WHAT DOES IT SAY OR DOES IT SAY WHAT'S GOING TO HAPPEN AT THE END OF THOSE TWO WEEKS?

IT SAYS THAT MRS.<sup>A</sup>BETTS CAN EITHER COME IN AND PAY THE FULL FACE AMOUNT OF THE CHECK IN CASH.

OR YOU CAN THEN DEPOSIT THE CHECK?

OR YOU DON'T DO ANYTHING AND THE COMPANY WILL DEPOSIT THE CHECK. THE PROBLEM IS THERE IS NEVER MONEY IN THE ACCOUNT SO WHAT MRS.<sup>A</sup>BETTS DID WAS ENGAGE IN A SERIES OF ROLLOVERS IN WHICH SHE WOULD GO IN, WRITE A NEW CHECK, SUBSTITUTE IT FOR THE OLD CHECK AND THEN PAY \$38 IN CASH SO IT IS ESSENTIALLY NO DIFFERENT FROM A CLASSIC LOAN SHARK TRANSACTION WHERE EVERY TWO WEEKS YOU'VE GOT TO PAY YOUR POINTS TO THE LOAN SHARK.

WERE THESE BEFORE OR AFTER THE DEPARTMENT DECIDED THAT ROLLOVERS WERE NOT AUTHORIZED?

THE DEPARTMENT NEVER AUTHORIZED ROLLOVERS. THESE TRANSACTIONS BEGAN BEFORE THE 1998 LETTER THAT WAS REFERENCED BY MISS TOWNES AND IN FACT THERE CAN BE NO ARGUMENT THAT 560 CONTEMPLATED THAT A ROLLOVER WAS PERMISSIBLE, BECAUSE WHAT HAPPENS IN A ROLLOVER IS NOT IN EXCHANGE FOR CURRENCY FOR A PAYMENT INSTRUMENT. SHE JUST GAVE THEM A NEW PAYMENT INSTRUMENT AND PAID THEM MONEY SO IT DOESN'T FIT WITHIN THE DEFINITION OF 560 AND 560 NEVER EVEN DOESN'T SAY ONE WORD ABOUT DEFERED PRESENTMENT OR LOANS BECAUSE IT WAS PASSED TO REGULATE CHECK CASHING.

I'M CONCERNED ABOUT HER PRIOR CHALLENGE TO THE RULE AND THE FACT THAT THAT WAS

DETERMINED IT WAS A FINAL ORDER. SHE DID NOT APPEAL AND NOW SHE IS RAISING IT SEEMS LIKE THIS VERY SAME ISSUE IN ANOTHER CASE. DON'T WE HAVE YEARS OF LAW THAT SAYS YOU ARE PRECLUDED FROM RAISING THAT SAME ISSUE?

I'M GLAD YOU BROUGHT THAT UP, JUSTICE CANTERO, BECAUSE I URGE THE COURT TO READ THAT OPINION CLOSELY, PARTICULARLY AT PARAGRAPH 2 1 AND THE FACTUAL FINDINGS FROM THE JUDGE NOTED WE WERE CONTENDING THAT THE RULE WAS INVALID IF IT WAS INTERPRETED TO ALLOW DEFERED PRESENTMENT. THE ONLY WAY THE RULE WOULD BE VALID IS IF IT WAS NARROWLY CONSTRUED TO COUNT FOR A PAYMENT INSTRUMENT. THE COURT WENT ON IN PARAGRAPH 2 2 OF THAT ORDER TO SPECIFICALLY FIND THAT THE DEPARTMENT HAS NO RULE, ORDER OR DECLARATORY STATEMENT AUTHORIZING DEFERED DEPOSIT TRANSACTION OR CONSECUTIVE DEFERED DEPOSIT TRANSACTION. WE DID NOT APPEAL THAT ORDER BECAUSE THE ORDER SPECIFICALLY FOUND THAT THERE WAS NO RULE, THERE WAS NO DECLARATORY STATEMENT AUTHORIZING DEFERED PRESENTMENT. WE DIDN'T NEED TO APPEAL THAT. THE ADMINISTRATIVE LAW JUDGE HAD A NARROW RULING AND THAT WAS GIVEN THE BROAD DEFINITION OF PAYMENT INSTRUMENT, A POSTDATED CHECK CAN QUALIFY AS A POSTDATED INSTRUMENT. THEY WENT ON TO STATE THAT A DEFERED DEPOSIT TRANSACTION OCCURS SUBSEQUENT TO THE CHECK CASHING TRANSACTION. IT IS SOMETHING IN ADDITION TO THE CHECK CASHING TRANSACTION. THE ONLY THING THAT THE JUDGE WAS LOOKING AT WAS WHETHER PAYMENT INSTRUMENT FIT WITHIN THE DEFINITION OR WHETHER A POSTDATED CHECK FIT WITHIN THE DEFINITION OF AN INSTRUMENT. SO WHEN THE COURT RULED THERE WAS NO RULE, NOTHING IN 560 PERMITTING DEFERED PRESENTMENT. THAT IS WHY THAT RULE WAS NOT CHALLENGED AND GOING BACK TO 1995 WHERE NCA CONTENDS THAT THE DEPARTMENT HAD SENT A LETTER, SAYING THAT DEFERED PRESENTMENT TRANSACTIONS FALL WITHIN 560, READ THAT LETTER CLOSELY AS WELL. IN THAT LETTER, JEFFREY JONES SAID, SUGGESTED THAT THE CHECK CASHING ASSOCIATION SEEK A DECLARATORY STATEMENT ON THAT SPECIFIC ISSUE BECAUSE THE LETTER WAS NOT BINDING. THEY NEVER SOUGHT A DECLARATORY STATEMENT. UNDER CHAPTER 120 IT IS A SIMPLE PROCEDURE. YOU FILE A PETITION WITH THE DEPARTMENT, GET A DECLARATORY STATEMENT IF ANYONE IS UNHAPPY WITH IT, YOU APPEAL AND THEN LET THE JUDGES DETERMINE EXACTLY WHAT THE LAW SAYS AND THAT'S WHAT SEPARATION OF POWERS IS ALL ABOUT. THEY NEVER DID THAT. IN FACT, IF YOU LOOK AT THE RULE ON ITS FACE, SIMPLY ALLOWS FOR POSTDATED CHECKS. IF THE RULE WERE TO BE INTERPRETED, TO PERMIT DEFERED PRESENTMENT TRANSACTIONS THEN AS THE 4TH DISTRICT FOUND IT CLEARLY EXCEEDED THE SCOPE OF THE DEPARTMENT'S AUTHORITY BECAUSE 560 IS SILENT AS A DEFERED PRESENTMENT TRANSACTION.

WELL, AS IT RELATES TO WAS SHE ALSO THE SAME PLAINTIFF IN THE 5TH DCA CASE?

THAT'S CORRECT, YES.

SO THE 5TH DCA HAD RULED WITH ANOTHER DEFENDANT BUT HAD RULED ADVERSE TO THE POSITION SHE TOOK IN THE 4TH DCA, CORRECT?

THE 5TH DCA RULED FIRST. AT THAT TIME OUR CASE PENDING IN WEST PALM BEACH WAS ALREADY PENDING WITH MRS. BETTS AND THE PLAINTIFF.

SO SHE WAS A PLAINTIFF IN A SIMILAR TRANSACTION BUT WITH DIFFERENT PARTIES AND TWO DIFFERENT DCA'S.

THE REASON THIS CASE AROSE IN THE 4TH DCA IS BECAUSE DONNA ROYTER WAS A COPLAINTIFF IN THAT CASE AND SHE LIVES IN LAKE WORTH. WE FILED THAT IN WEST PALM BEACH WELL BEFORE ACE WAS DECIDED. ACE PROCEEDED TO APPEAL MORE QUICKLY BECAUSE THAT WAS A MOTION TO DISMISS.

BUT CORRESPONDING, JUST HELP ME PROCEDURALLY, WHEN WAS THE 5TH DCA CASE FILED AND

THE 4TH DCA CASE FILED?

THEY WERE FILED APPROXIMATELY AT THE SAME TIME. I DON'T KNOW THE EXACT DATES. THE 5TH DCA RULED IN ACE ABOUT TWO YEARS AGO. AT THAT POINT THE 4TH DCA CASE HAD ALREADY BEEN PENDING FOR THREE YEARS. ONCE ACE WAS DECIDED, OF COURSE, THE TRIAL COURT WAS BOUND BY THAT, AND RULED CONSISTENT WITH THE 5TH DCA THAT THESE WERE NOT PERMITTED AND WE TOOK THE APPEAL UP TO THAT AT THAT TIME. DONNA ROYTER IS NO LONGER A PLAINTIFF IN THIS CASE BECAUSE THE COURTS HELD SHE HAD TO GO ARBITRATE HER CLAIM. THAT'S UP HERE AS WELL ALONG WITH A COUPLE OF OTHER ARBITRATION CASES ALONG WITH THE BUCKEYE CASE AND ACTUALLY NOW IS BEFORE THE UNITED STATES SUPREME COURT. SET FOR ORAL ARGUMENT ON NOVEMBER 29TH. SO THAT IS THE REASON WHY THE CASES ARE IN DIFFERENT DISTRICTS. FURTHER WITH RESPECT TO THE RULE, I WANT TO URGE THE COURT HERE, AND I'M ALSO GOING TO CLARIFY SOMETHING THAT WAS BROUGHT UP BY THE OTHER SIDE. WE, IT WAS STATED IN THE OTHER BRIEF THAT WE HAVE BEEN INCONSISTENT IN OUR POSITION AS TO THE RULE AND I WANT TO EMPHASIZE THAT WE HAVE NOT. WE HAVE SAID THAT THAT RULE DID NOT AUTHORIZE DEFERED PRESENTMENT. IT DOESN'T ON ITS FACE IT DOES NOT AUTHORIZE IT. THE ADMINISTRATIVE LAW JUDGE HELD THE SAME IN THAT OPINION. BUT WE ALSO CONTENDED THAT IF ONE WERE TO INTERPRET THAT RULE TO PERMIT THE DEFERED PRESENTMENT THEN CLEARLY IT IS INVALID. WHAT THE ADMINISTRATIVE JUDGE DID WAS CONSTRUE THE RULE NARROWLY, HAVE A PRESUMPTION OF VALIDITY TO IT, BECAUSE IT WAS ENACTED BY THE ADMINISTRATIVE AGENCY AND THAT'S WHAT THE JUDGE DID. WE RAISED THE ARGUMENT, AND IT IS SET FORTH IN PARAGRAPH 8 4 OF THE ORDER. WE RAISED THAT ARGUMENT WITH THE ADMINISTRATIVE JUDGE AND SAID, WELL, LOOK AT HOW THE DEPARTMENT IS INTERPRETING THIS AND APPLYING IT. THEY ARE ALLOWING LOAN TOSS GO ON AND THAT GOES BEYOND WHAT RULE SAID. THE COURT FOUND THAT THAT WAS WITHOUT MERIT AND THE RULE DID NOT PERMIT SUCH TRANSACTIONS. SO IT IS NOT IN THE CONTEXT OF ADMINISTRATIVE PROCEEDING FOR A JUDGE TO MAKE THAT DETERMINATION. IT IS MORE PROPERLY DONE WHEN THERE IS AN ACTUAL RECORD, THERE ARE FACTS, TRANSACTIONS, THERE IS A CONTRACT THAT STATES THAT.

WHAT REMEDY ARE YOU REALLY LOOKING FOR HERE? IF WE DO SAY, IF WE DO FOLLOW YOUR LOGIC AND SAY THAT THIS IS NOT AUTHORIZED UNDER THE 1994 STATUTE, THEN WHAT HAPPENS?

THE REMEDY WE ARE SEEKING IS FOR THE COURT TO DECLARE THAT PER PRESENTMENT TRANSACTION PRIOR TO THE EXPRESS AUTHORIZATION IN 2001, WE ARE USURIOUS LOANS, THE INTEREST RATES WE ARE TALKING ABOUT NOW IS IN THE 100TH PERCENT ANNUAL PERCENTAGE RATE.

AS I UNDERSTAND IT YOU WOULD GET THIS MONEY, SAY \$300 AND YOU WOULD HAVE TO PAY BACK 10% PLUS THE \$5 FEE; IS THAT HOW IT GOES? AND SO HOW IS THAT A VIOLATION?

WELL, BECAUSE 10% FEE ON A TWO-WEEK PERIOD EQUATES TO SOMETHING LIKE A 270% ANNUAL PERCENTAGE RATE. FLORIDA CAPS INTEREST AT 18%.

BUT YOU ARE NOT ASKING US TO MAKE THE ULTIMATE DECISION THE 4TH REMANDED BACK FOR ADDITIONAL PROCEEDINGS BECAUSE THERE WAS A GRANTING OF A MOTION FOR SUMMARY JUDGMENT.

IT IS GOING TO HAVE TO GO BACK, YES, BUT I THINK THE CORRECT RULING WOULD BE THAT IT HAS TO GO BACK, GIVEN A RULE OF LAW SET FORTH BY THE SUPREME COURT HERE THAT A DEFERED PRESENTMENT TRANSACTION ENTERED INTO PRIOR TO OCTOBER 2001 WAS A LOAN. IT WAS A USURIOUS LOAN. IT WAS NOT AUTHORIZED BY ANY RULE OR DECLARATORY STATEMENT BY THE DEPARTMENT BECAUSE AS THE ADMINISTRATIVE LAW JUDGE FOUND IT DID NOT AUTHORIZE DEFERED PRESENTMENT. IT AUTHORIZED SOMEBODY TO EXCHANGE A POSTDATED

CHECK FOR CURRENCY. WHEN THE AGREEMENT GOES BEYOND THAT AND STATES THAT NOT ONLY WERE WE EXCHANGING A CHECK FOR CURRENCY BUT YOU ARE PROMISING TO COME BACK HERE IN TWO WEEKS AND PAY ME 10% ON TOP OF THE CASH I'VE GIVEN YOU THAT GOES WELL BEYOND CHECK CASHING AND ANYTHING THAT WAS AUTHORIZED BY ANY RULE IN WHICH CASE THE SO-CALLED SAFE HARBOR, 56107 DOES NOT APPLY, EITHER, BECAUSE THERE IS NO RULE TO RELY ON IN GOOD FAITH THAT WOULD AUTHORIZE DEFERED PRESENTMENT. WHEN THESE CASES BEGAN SEVERAL YEARS AGO, WE WERE FACED WITH ARGUMENTS THAT THESE WEREN'T EVEN LOANS. THESE HAVE EVOLVED SINCE THAT TIME AND NOW WE HAVE GOTTEN TO THE POINT WHERE THE OTHER SIDE IS CONTENDING, WELL, THEY WERE LOANS BUT THEY WERE AUTHORIZED, AND EVEN CONTENDING THAT THEY ARE AUTHORIZED BY THE PLAIN LANGUAGE OF CHAPTER 560 WHICH SAYS NOTHING ABOUT LOANS, SAYS NOTHING ABOUT DEFERED PRESENTMENT.

WHY DOESN'T THE PLAIN LANGUAGE WHY DOESN'T THE PLAIN LANGUAGE INCLUDE THESE TYPES OF TRANSACTIONS IF YOU LOOK AT ALL OF THE DEFINITIONS AND EVERYTHING THAT 560 AUTHORIZES WHY DOESN'T IT INCLUDE THIS TRANSACTION?

BECAUSE IT AUTHORIZES AN EXCHANGE OF CURRENCY FOR A PAYMENT INSTRUMENT AND THE AGREEMENT IN THIS CASE WAS NOT AN EXCHANGE OF CURRENCY FOR PAYMENT INSTRUMENT. IT WAS AN AGREEMENT THAT IF MRS.^BETTS PAYS US \$30 WE WILL GIVE HER \$300 FOR THE USE FOR TWO WEEKS. ESSENTIALLY WE WILL GIVE YOU \$300 IF YOU COME BACK AND GIVE US 330 TWO WEEKS LATER. THAT'S NOT IN 560. 560 IS I WILL GIVE YOU CASH IN EXCHANGE FOR A CHECK.

WELL, ISN'T THAT EXACTLY WHAT IT IS, THOUGH? IF SHE PAID A CHECK, THEY MAY HAVE AGREED NOT TO DEPOSIT THE CHECK FOR X AMOUNT OF TIME, BUT SHE, IN FACT, EXCHANGED A CHECK FOR CASH?

BUT THERE IS MORE. THE AGREEMENT GOES BEYOND THAT AND THIS IS CONSISTENT WITH THE ADMINISTRATIVE ORDER THAT SPECIFICALLY FOUND FOR EXAMPLE AT PARAGRAPH 7 4 THE ACT OF CASHING THE CHECK IS COMPLETE AT THE TIME THE CHECK CASHIER PAYS THE MAKER OF THE CHECK IN CURRENCY. SO THAT TRANSACTION IS ESSENTIALLY COMPLETE. THAT IS A CLASSIC CHECK CASHING TRANSACTION. THIS AGREEMENT GOES WAY BEYOND THAT. SAYS NOT ONLY ARE WE EXCHANGING.

LET ME SEE IF I UNDERSTAND, WOULD YOU EXPLAIN TO ME WHAT YOU WOULD DO, WHAT A PERSON UNDER YOUR THEORY, IF YOU GO INTO ONE OF THESE PLACES WITH A CHECK, THEY GIVE YOU THE \$300, THEN WHAT SHOULD HAPPEN?

WELL, AT THAT POINT IT WOULD BE OVER. THE AGREEMENT WAS I'M GOING TO GIVE YOU A CHECK AND YOU'RE GOING TO GIVE ME \$300. YOU ARE DONE.

WHAT ABOUT IF HE GAVE YOU \$300 PLUS A \$30 FEE AND YOU GIVE THEM THE \$300, TAKE YOUR FEE OUT OF IT AT THAT POINT BUT THEN DO NOT CASH THE CHECK FOR TWO WEEKS?

IF THERE IS NO AGREEMENT TO HOLD THE CHECK FOR TWO WEEKS THEN IT IS NOT A LOAN. IF THE ONLY AGREEMENT IS WE ARE GOING TO EXCHANGE CURRENCY FOR A PAYMENT INSTRUMENT AND THERE WILL BE A FEE INVOLVED, THAT'S FINE. THAT'S CHECK CASHING.

BUT IT ONLY BECOMES A LOAN IF THE PERSON HAS TO COME BACK IN THE OFFICE; IS THAT WHAT YOUR ARGUMENT IS?

OR IF THERE IS AN AGREEMENT THAT THE PERSON PROVIDING THE CURRENCY HAS TO GET PAID FOR TWO WEEKS. FOR EXAMPLE THE CONSIDERATION FOR THESE ITEMS AND CONDITIONS IS THE AGREEMENT THAT NCA WILL NOT PRESENT A CUSTOMER'S CHECK TO THE FINANCIAL INSTITUTION FOR PAYMENT ON THE DATE OF RECEIPT. THAT'S THE AGREEMENT HERE. IN



ADDITION, THERE ARE TRANSACTIONS GOING ON WELL BEYOND CHECK CASHING BECAUSE WHAT TYPICALLY WOULD HAPPEN IS AND WHAT HAPPENED IN SOME OF THESE TRANSACTIONS IS THE CUSTOMER JUST COMES BACK BECAUSE THEY DON'T HAVE THE MONEY IN THEIR ACCOUNT AND THEY SAY, LET ME JUST BUY IT BACK, AND WE WILL DO IT ALL OVER AGAIN. THAT HAPPENED IN LATER TRANSACTIONS HERE. NOW, THAT AGAIN IS OUTSIDE THE AMBIT OF 560, BECAUSE WHAT IS OCCURRING THERE IS NO DIFFERENT FROM A LOAN UNDER CHAPTER 687. YOU HEAR REPEATEDLY FROM THE OTHER SIDE THAT NOTHING IN 560 PROHIBITS THESE TRANSACTIONS. THAT'S IN THE ADMINISTRATIVE ORDER A COUPLE OF TIMES, TOO. WE ARE NOT CONTENDING THAT CHAPTER 560 PROHIBITS THESE TRANSACTIONS. 560 IS SILENT ON THE LENDING OF MONEY. THESE STATUTES TO ANSWER JUSTICE WELLS QUESTION AT THE BEGINNING OF THE PETITIONER'S ARGUMENT, THEY CAN BE READ TOGETHER. 560 GOVERNS THE CHECK CASHING. 687 GOVERNS LOANS. THIS IS A LOAN AGREEMENT, AND IN A TRUE CHECK CASHING TRANSACTION, THE CUSTOMER WILL COME IN THE STORE AND THE ONLY AGREEMENT WILL BE CASH MY CHECK FOR A FEE. NOT FRONT ME MONEY AND I WILL GIVE YOU MONEY IN TWO WEEKS. REALISTICALLY, WHEN 560 WAS ENACTED IT WAS NEVER ENACTED FOR THE PURPOSE OF SOMEBODY GOING INTO A CHECK CASHING STORE TO CASH THEIR OWN CHECK. IT WAS TO REGULATE PEOPLE CASHING BENEFIT CHECKS OR THIRD-PARTY CHECKS. IF YOU HAVE A CHECKING ACCOUNT YOU CAN CHECK A CASH A CHECK AT YOUR OWN BANK. WHAT HAPPENED WAS THESE STORE FRONT CHECK CASHING OPERATIONS PRIOR TO 1994 WERE ESSENTIALLY LAUNDERING MONEY. CONGRESS CONVENED A TASK FORCE. THEY WERE TOLD BY FLORIDA CHECK CASHIERS THAT THIS LAW IF ENACTED WOULD ONLY REGULATE CHECK CASHING, IT WOULD SET MAXIMUM FEES. THE FLORIDA CHECK CASHING ASSOCIATION TOLD THE TASK FORCE THIS IS NOT GOING TO OPEN THE DOOR TO PAYDAY LENDING. THAT'S USURY, WE'RE NOT TALKING ABOUT THAT. AS SOON AS THE STATUTE WAS PASSED THEY STARTED DOING LOANS. THEY GOT A LETTER WHICH THE DEPARTMENT DECLARED WAS NOT BINDING. THEY GOT A FURTHER LETTER WHICH THEY CONTEND AUTHORIZED WHAT THEY DID BUT THERE ARE A COUPLE OF IMPORTANT THINGS THERE. THE LETTER, AND EVERY OTHER PRONOUNCEMENT FROM ANY AGENCY OR ANYTHING ELSE ALWAYS PROHIBITED ROLLOVERS AND A LOT OF THESE TRANSACTIONS IN THIS CASE WERE ROLLOVERS BUT MORE IMPORTANTLY THEY FAILED TO USE THE ADMINISTRATIVE PROCEDURE WAS INVITED BY THE DEPARTMENT TO DO. IN 1995 AT THE VERY BEGINNING THEY WERE TOLD THIS ISN'T BINDING. SEEK A DECLARATORY STATEMENT. IT IS EASY, IF IS A PROCESS PROVIDED FOR IN CHAPTER 120 AND IT GETS THE ISSUE BEFORE THE JUDICIARY IF THERE IS ANY QUESTIONS OF STATUTORY INTERPRETATION. THEY DECLINED TO DO THAT, PROBABLY BECAUSE EITHER THE DEPARTMENT WOULD NOT HAVE ISSUED A RULE THAT EXPRESSLY PROVIDED FOR DEFERED PRESENTMENT BECAUSE THERE WAS NO BASIS FOR IT IN CHAPTER 560 OR IF SUCH A RULE THAT EXPRESSLY AUTHORIZED IT HAD BEEN PROMULGATED OR A DECLARATORY STATEMENT HAD DECLARED THAT IT WAS PERMISSIBLE THAT WOULD NOT HAVE HELD UP WHEN IT GOT BEFORE THE COURT BUT IT DIDN'T GET BEFORE THE COURTS BECAUSE THE CHECK CASHIERS DECIDED WE'VE GOT A LETTER, WE'VE GOT FRIENDLY REGULATORS. LET'S START DOING THIS AND SEE WHAT HAPPENS FROM THERE. THAT'S NOT THE WAY THE GOVERNMENTAL SCHEME IS SUPPOSED TO WORK AND THEY DIDN'T AVAIL THEMSELVES TO THE ADMINISTRATIVE PROCEDURE THAT WOULD HAVE ANSWERED THIS QUESTION YEARS AGO AND GIVEN A DEFINITIVE ANSWER AND THE ANSWER I THINK THEY WOULD NOT HAVE LIKED WHICH IS WHY THEY DID NOT AVAIL THEMSELVES OF THAT PROCEDURE. I URGE THE COURT IN REVIEWING THESE TWO OPINIONS OF THE 4TH AND 5TH DCA TO READ THEM CLOSELY. I THINK THE COURT WILL FIND THAT THE OPINION OF THE 4TH DISTRICT IS BETTER REASONED THAN THAT OF THE 5TH. IT GOES MORE INTO THE ACTUAL TEXT OF WHAT IS IN THE STATUTES, AND I THINK MOST IMPORTANTLY IT SPECIFICALLY DISAGREES WITH THE 5TH DISTRICT WHEN THE 5TH DISTRICT CONCLUDED OR AT LEAST TWO OF THE JUDGES ON THE PANEL CONCLUDED THAT NOT ONLY WAS A DEFERED PRESENTMENT TRANSACTION PERMISSIBLE BUT THEY DIDN'T SEE ANYTHING WRONG WITH THE ROLLOVERS, EITHER. THAT TURNS DECADES OF USURY LAWS ON ITS HEAD. THEY DIDN'T EVEN CITE CHAPTER 687 OR PURPORT TO ANALYZE THE TRANSACTION. IT SAID WE DON'T SEE HOW THE SPECIFIC FORM OF THE TRANSACTION IS IMPORTANT. THAT'S BACKWARDS WHEN YOU ARE LOOKING AT A USURY CASE YOU LOOK AT THE SUBSTANCE OF THE TRANSACTION AND WHAT IS ACTUALLY GOING ON WHICH IS CLEARLY A LOAN HERE, AND THEY

IGNORED THE FACT THAT WHAT HAPPENED TO MRS. BETTS IS WHAT HAPPENS WHEN PEOPLE ARE DEALING WITH LOAN SHARKS, AND THAT SOUNDS PREJUDICIAL BUT THAT IS WHAT THE STATUTES CALL IT, LOAN SHARKING. WHAT HAPPENS IS PEOPLE GET OVER THEIR HEAD. THEY FIND THEMSELVES IN A POSITION LIKE MRS. BETTS WAS WHERE SHE ENDED UP PAYING OVER \$1000 TO NCA IN THE COURSE OF OVER A YEAR FOR A \$300 LOAN. WE HAVE LAWS IN THIS STATE FOR GOOD REASON, PUBLIC POLICY WILL NOT PERMIT THAT TO GO ON.

OBVIOUSLY THERE IS A MARKET FOR THIS INDUSTRY BECAUSE THERE ARE SOME PEOPLE THAT FIND THEMSELVES BELOW THE LEVEL WHERE THEY CAN OBTAIN A LOAN. THEY CAN'T SURVIVE FROM PAYCHECK TO PAYCHECK, AND THEREFORE THEY NEED SOME WAY TO OBTAIN MONEY BEFORE THEIR NEXT PAYCHECK, AND AT LEAST THE LEGISLATURE HAS SAID THIS IS WHY IT IS ALMOST A NECESSARY EVIL THAT WE NEED THIS INDUSTRY.

I THINK THERE IS CLEARLY A MARKET FOR IT AND I THINK WHAT THE LEGISLATURE DID WAS COMMENDABLE IN 2001. THEY SAID, LOOK, YOU CAN DO THIS BUT THEY PUT IN SO MANY CONSUMER PROTECTIONS THAT WHAT HAPPENED TO MRS. BETTS CANNOT HAPPEN ANY MORE. THEY REQUIRE THE CHECK CASHIERS TO SET UP A DATABASE SO WHEN A CUSTOMER COMES IN THE CHECK CASHIER CAN IMMEDIATELY CHECK TO SEE IF THEY HAVE AN OUTSTANDING LOAN SOMEWHERE ELSE. IF THEY DO THEY ARE NOT PERMITTED TO DO ONE. THE LOAN HAS TO BE COMPLETED AT THE END OF TWO WEEKS. THE PERSON EITHER REDEEMS THE CHECK OR IT GETS DEPOSITED. THEY CAN'T DO ANOTHER TRANSACTION FOR 24 HOURS SO YOU DON'T GET ON THAT TREADMILL OF DEBT. IF YOU CAN'T PAY IT BACK YOU CAN NOTIFY THE CHECK CASHIER AND SAY I DON'T HAVE THE MONEY. THEY WILL FOREBEAR FOR 60 DAYS IF THE CUSTOMER AGREES TO CREDIT COUNSELING. SO THE LEGISLATURE RECOGNIZED THERE WAS A NEED OUT THERE AND THESE COULD PROVIDE SOME SERVICES TO PEOPLE WHO NEEDED THEM, BUT WHEN THEY DID THAT THEY WERE VERY CAREFUL TO PUT IN VERY EXTENSIVE CONSUMER PROTECTIONS THAT ELIMINATED THE PROBLEMS THAT WERE GOING ON IN THE '90s WITH THESE DEFERRED PRESENTMENT TRANSACTIONS AND THE PEOPLE FALLING BEHIND AND GETTING INTO A SITUATION WHERE THEY WERE RUNNING FROM ONE PLACE TO ANOTHER TO REDEEM ONE CHECK AND THEN GOING ACROSS THE STREET TO REDEEM ANOTHER ONE AND THAT'S WHAT HAPPENS WHEN PEOPLE ARE BORROWING MONEY AT A RATE OF HUNDREDS OF PERCENTS OF INTEREST. THAT FOLLOWS. THAT'S WHY WE HAVE LAWS AGAINST IT. IF THERE ARE NO FURTHER QUESTIONS, I THANK YOU.

THANK YOU. REBUTTAL?

TO ANSWER JUSTICE CANTERO'S QUESTION, NO, THERE WERE NO ROLLOVERS FOR FIVE MONTHS BEFORE THE LETTER OF INTENT. WHAT YOU HAVE HEARD FROM OPPOSING COUNSEL IS SILENCE IS PROHIBITION. THAT SIMPLY IS NOT THE LAW OF STATUTORY CONSTRUCTION IN THE STATE OF FLORIDA. AS THIS COURT RECOGNIZED IN 2003, IN LEVEL THREE COMMUNICATIONS, WHICH IS CITED ON PAGE 27 OF MY BRIEF, AND IN WHICH THE COURT SAID, LOOK, IF THERE IS A DEFINITION AND IT NEEDS REFINEMENT WE LEAVE THAT TO THE AGENCY, AND THE AGENCY CAN REFINE IT. NO QUESTIONS THAT A DEFERRED PRESENTMENT TRANSACTION IS THE EXCHANGE OF CURRENCY FOR A PAYMENT INSTRUMENT. THERE IS SILENCE ABOUT WHAT HAPPENED AFTER THAT. THIS COURT SHOULD DO AS IT DID IN LEVEL THREE COMMUNICATIONS AND SAY WE DEFER TO THE AGENCY. I ALSO URGE YOU TO READ THE

DOES THE NATURE OF THE USURY STATUTE AND TRADITIONALLY HOW IT HAS BEEN APPLIED ALTER THAT ANALYSIS IN ANY WAY THAT BECAUSE THAT STATUTE SEEMS TO GO BEYOND AND TRANSCEND THE SUBSTANCE OVER FORM TO GET BEHIND WHAT IS ACTUALLY GOING ON IN TRANSACTIONS. IT SEEMS AS THOUGH THAT IS ALMOST A PUBLIC POLICY STATEMENT OF THE STATE.

BUT WHERE THE LEGISLATURE IS PRESUMED TO KNOW THE USURY STATUTE, AND I'M SURE IT

DOES, AND TO SAY THESE TRANSACTIONS THAT WE ARE DEFINING AND WE ARE EXCLUDING THOSE WE WANT EXCLUDED AND EVERYTHING ELSE IS IN HERE, WE ARE NOT SUPPOSED TO SUBSTITUTE OUR JUDGMENT FOR THE LEGISLATURE. WHAT THE 4TH DCA DID WAS JUDICIAL LEGISLATION. IT PROVIDED A PROHIBITION THE LEGISLATURE HAD NOT DONE. THE 4TH DCA ALSO EXPLICITLY RECOGNIZED THAT THESE RULES PERMITTED DEFERRED PRESENTMENT TRANSACTION. THAT IS PLAIN ON THE FACE OF THE 4TH DCA'S OPINION AND THAT BRINGS US TO THE ENTITLEMENT TO THE SAFE HARBOR PROVISION OF CHAPTER 56007. THAT STATUTE SAYS THAT IF AN ENTITY RELIES IN GOOD FAITH ON, AMONG OTHER THINGS, THE RULES OF THE DEPARTMENT, THAT IT IS FREE FROM CIVIL ADMINISTRATIVE OR CRIMINAL PROSECUTION. UNLESS THAT SAFE HARBOR IS RECOGNIZED, THE AUTHORITY OF THE DEPARTMENT TO MAKE RULES AND THE RESPONSIBILITY OF THE REGULATED ENTITY TO RELY ON THOSE RULES AND THAT GUIDANCE FROM THE DEPARTMENT IS RECOGNIZED.

IS THAT A QUESTION OF FACT OR LAW, THOUGH?

I'M SORRY, WHETHER IT IS GOOD FAITH WILL BE A QUESTION OF FACT. THE FACT THAT THE SAFE HARBOR IS AVAILABLE IS A QUESTION OF LAW.

WHEN IS THAT HARBOR AVAILABLE? IS IT WITH ONLY DOES IT HAVE TO BE A RULE OR SOME FORMAL THING OR CAN IT JUST BE A LETTER?

THE STATUTE SPECIFICALLY SAYS, AND I'M GOING TO TRY TO QUOTE. IT HAS TO BE A STATUTE, RULE OR ORDER OF THE DEPARTMENT. WHETHER THE RULE THE LETTER IS IN THERE IS A MATTER OF DEBATE.

WELL, THE LETTER AT LEAST ONE LETTER THAT I AM FAMILIAR WITH SPECIFICALLY SAYS THIS ISN'T A DECLARATORY STATEMENT OR RULE OR ORDER?

NO QUESTION, BUT EVERY TIME THE DEPARTMENT ISSUED A CERTIFICATE TO A CHECK CASHIER TO ENGAGE IN KNOWING IT WAS ENGAGING ENDEAVORED PRESENTMENT TRANSACTIONS, THAT AUTHORIZATION BECOMES AN ORDER OF THE DEPARTMENT. WE RECEIVED THAT ORDER WHEN WE CAME TO TOWN SPECIFICALLY FOR THE PURPOSE

IS THIS JUST A LICENSING PROCESS ITSELF IS TRANSFORMED INTO WHAT WOULD BE AN ORDER?

IT IS AN AUTHORIZATION. WE CAME TO THE DEPARTMENT. WE SAID CAN WE DO THIS, THEY SAID HERE IS YOUR CERTIFICATE TO DO IT. HERE ARE THE RULES YOU DO IT UNDER. THE DEPARTMENT THEN ENACTED THESE RULES THAT THE 4TH DCA RECOGNIZED PERMITTED DEFERED PRESENTMENT TRANSACTIONS. AND THE ARGUMENT THAT THE ONE THAT THIS RULE DOES NOT PERMIT A DEFERED PRESENTMENT TRANSACTION IS A LITTLE BIT DIFFERENT. IT SAYS YOU CAN TAKE A POSTDATED CHECK WHICH IMPLIES THE AGREEMENT TO HOLD THAT CHECK, BUT YOU HAVE TO SHAFT YOUR CUSTOMER BECAUSE YOU CAN'T HOLD IT, EVEN THOUGH YOU SAID YOU WOULD. THAT'S NOT WHAT THE ADMINISTRATIVE LAW JUDGE INTENDED.

YOUR TIME IS UP.

THANK YOU, YOUR HONOR.

THANK YOU VERY MUCH, COUNSEL. WE APPRECIATE YOUR ASSISTANCE IN RESOLVING THIS CASE. THE COURT WILL BE IN RECESS.

THE MARSHAL: ALL RISE.