

>> ALL RISE.

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

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME
COURT.

NEXT CASE ON THE DOCKET IS
BROWNING VERSUS POIRIER.

>> MORNING MAY IT PLEASE THE
COURT.

I'M SEAN SHEPPARD, I REPRESENT
HOWARD BROWNING.

I RESERVE FIVE MINUTES FOR
REBUTTAL.

THE CASE BEFORE YOU TODAY
INVOLVES ORAL AGREEMENT BETWEEN
TWO PARTIES AND THERE'S A
CERTIFIED QUESTION BEFORE THE
COURT FROM THE FIFTH DISTRICT
COURT OF APPEAL.

WE'RE ASKING-- SPEAK UP A
LITTLE BIT.

>> APOLOGIZE.

>> RAISE THAT MIC UP BECAUSE
YOU'RE ON THE TALL SIDE.

>> THANK YOU.

THERE IS A CERTIFIED QUESTION
BEFORE THE COURT TODAY FROM THE
FIFTH DISTRICT COURT OF APPEAL
RELATING TO THE DISPOSITION OF A
DIRECTED VERDICT IN FAVOR OF THE
RESPONDENT IN THIS CASE.

AND WE WOULD ASK THE COURT TO
ANSWER THAT CERTIFIED QUESTION
IN THE NEGATIVE.

THE QUESTION INVOLVES, IS AN
ORAL AGREEMENT TO PLAY THE
LOTTERY AND SPLIT THE PROCEEDS
IN THE EVENT A WINNING TICKET IS
PURCHASED UNENFORCEABLE UNDER
THE STATUTE OF FRAUDS WHEN THERE
IS NO TIME AGREED FOR THE
COMPLETE PERFORMANCE OF THE
AGREEMENT.

THE PARTIES INTENDED AGREEMENT
TO EXTEND THE AGREEMENT LONGER
THAN ONE YEAR.

IT DID EXTEND PERIOD OF 14
YEARS.

CLEARLY APPEARS FROM THE
SURROUNDING CIRCUMSTANCES AND
THE OBJECT TO BE ACCOMPLISHED
THAT THE ORAL AGREEMENT WOULD
LAST LONGER THAN ONE YEAR.
SETTING ASIDE THE DISAGREEMENTS
FACTUALLY I HAVE WITH THE
CERTIFIED QUESTION WE ASK THE
COURT TO FIND IN THE NEGATIVE IN
RESPONSE TO THE QUESTION, THE
STATUTE OF FRAUDS DEFENSE RAISED
BY THE RESPONDENT IN THIS CASE
EMANATES FROM FLORIDA STATUTE
725.01, WHICH STATES THAT ALL
CONTRACTS ARE REQUIRED TO BE IN
WRITING IF IT'S A CONTRACT MONEY
AGREEMENT NOT TO BE PERFORMED
WITHIN THE SPACE OF ONE YEAR
FROM THE MAKING THEREOF.
AND IN THIS CASE OBVIOUSLY THERE
WAS A ROMANTIC RELATIONSHIP
BETWEEN THE PARTIES INVOLVED.
THEY WERE NEVER MARRIED.
THEY STARTED THE RELATIONSHIP IN
1991.

THEY ENTERED INTO THIS
TREATMENT IN 1993 THEY PURCHASED
A FLORIDA RAFFLE TICKET IN THE
YEAR 2007.

THE PETITIONER CONTEND THAT--
>> CAN YOU EXPLAIN JUST AGAIN,
WHEN THEY ENTERED INTO THIS
AGREEMENT.

>> YES.

>> WAS IT, WAS NOT REDUCED TO
WRITING OF COURSE.

WAS IT A, A DISCUSSION, WE'LL DO
THIS, YOU WILL DO THAT?

OR, WAS IT, BY THEIR CONDUCT,
THAT'S WHAT THEY DID?

I UNDERSTAND THIS IS, WE'RE ON A
CONTRACTUAL CASE.

TRYING TO UNDERSTAND WHAT THE
FORMATION OF THAT CONTRACT WAS
BACK WHEN THEY GOT TOGETHER?

>> SURE.

>> WHAT WAS THE TESTIMONY ON
THAT?

>> THE TESTIMONY ON THAT THERE
WAS AN ACTUAL CONVERSATION AND

AGREEMENT MADE.

THAT IS OF RECORD IN THE CASE.

ASIDE FROM THAT, THESE WERE
PARTIES WHO BEFORE THE LOTTO
STARTED AND POWERBALL STARTED
WOULD ACTUALLY DRIVE
OUT-OF-STATE AND BUY TICKETS
OUT-OF-STATE.

THERE WAS WITNESSES WHO
TESTIFIED THEY WOULD COME TO
THEM, ASK THEM TO BUY TICKETS.
THEY WOULD DRIVE TO OTHER STATES
TO BUY TICKETS.

>> THE AGREEMENT WAS, EACH PARTY
BUY TICKETS AND IF EITHER PARTY
WON THEY WOULD SPLIT IT WITH THE
OTHER PARTY.

IS THAT?

>> THEY WOULD BUY TICKETS
TOGETHER.

PUT THEM ON THE MANTLE IN
THEIR HOUSE WHEN THEY GOT HOME.
CHECK THE RESULTS.

MANTLE.

>> THIS WENT ON FROM 1993 UNTIL
2007?

>> YES.

>> IN 2007, FOR THE JULY 4TH
FIRECRACKER RAFFLE FOR THE LOTTO
THEY-- RAFFLE, THEY BOUGHT A
MILLION DOLLAR WINNING TICKET.

>> ON STATUTE OF FRAUDS ISSUE
ITSELF, IS IT YOUR CONTENTION
THAT IT COULD HAVE, THAT THEY
COULD HAVE, WINNING TICKET COULD
HAVE BEEN BOUGHT WITHIN THE
YEAR?

THERE WAS A POSSIBILITY.

AND THEREFORE, THE STATUTE OF
FRAUD DOES NOT APPLY?

OR THAT THERE WERE MULTIPLE
CONTRACTS BETWEEN THE PARTIES?

>> FORMER.

THE FORMER.

WE'RE SAYING THE STATUTE OF
FRAUDS DOESN'T APPLY HERE
BECAUSE THE CONTRACT WAS
COMPLETELY CAPABLE OF BEING
PERFORMED WITHIN A YEAR.

AND LIKE THE CASES WE'VE CITED

IN OUR BRIEF, THERE ARE MANY OF THEM, BUT FROM DEALING FROM EMPLOYMENT CONTRACTS TO PEOPLE WHO WORK FOR PEOPLE BEFORE THEY DIE AND PERSON SAYS IN EVENT OF MY DEATH I WILL BE PAID UP FOR EVERYTHING YOU OWE TO ME AND INCLUDE IN MY WILL, EMPLOYMENT CONTRACTS TERMINABLE AT WILL. ALL THE CONTRACTS ARE ENFORCEABLE, EVEN THOUGH INDEFINITE PERIOD OF TIME FOR COMPLETION OF ACT THE INVOLVED. IN THIS CASE BEING LOTTERY PURCHASED TICKETS OBVIOUSLY THEY CAN ENTER INTO AN AGREEMENT ONE ANOTHER, LOTTERY EVERY DAY, WE HAVE LOTTERY EVERY DAY, THEY COULD GO OUT BUY A TICKET AND WIN AND--

>> WHEN WOULD THE STATUTE OF FRAUDS UNDER YOUR THEORY EVER APPLY?

YEAH.

>> IT WOULD APPLY IF THE AGREEMENT WAS DIFFERENT, OKAY? IF FOR INSTANCE, THEY ENTERED INTO SOME AGREEMENT THAT HAD DIFFERENT TERMS TO IT, FOR A LONGER DURATION, LONGER PERIOD OF TIME, OR SOMETHING BY THE OBJECT OF THE AGREEMENT THAT THEY MADE WOULD NECESSITATE IT BEING LONGER THAN A PERIOD OF ONE YEAR.

AND THE OBJECT OF IT BEING MADE I THINK IS A HUMIDITY CALL IS IF, YOU KNOW, WE AGREE TO, THE WORLD CUP IS EVERY FOUR YEARS. WE AGREE WE'LL BUY IT.

SHIRTS FROM THIS COMPANY TO MAKE WORLD CUP T-SHIRTS IN THE YEAR 2018, THE NEXT WORLD CUP. OBVIOUSLY FROM THE OBJECT TO BE ACCOMPLISHED FROM THAT PARTICULAR AGREEMENT, NECESSARILY IT WILL BE ACCOMPLISHED MORE THAN A YEAR AWAY.

THAT IS WHAT THE LANGUAGE SPEAKS

OF.

>> THAT CIRCUMSTANCE WOULD
APPLY.

>> YES OBVIOUSLY THE COMPLETION
OF THAT CONTRACT WOULD CERTAINLY
EXTEND BEYOND A YEAR BUT IN THIS
CASE--

>> WHY WOULD THAT EVEN BE TRUE
IN THAT SITUATION?
BECAUSE YOU COULD MAKE THE
SHIRTS IN ANTICIPATION OF THE
WORLD CUP?

>> I DIDN'T FINISH THE THOUGHT,
BUT IT COULD BE THAT, YOU KNOW,
IF YOU'RE GOING TO BE A VENDOR
AT THE WORLD CUP PRECISELY, NOT
SIMPLY MAKING.
SHIRTS AND DELIVERING THEM
WITHIN A YEAR, THAT VENUE WILL
BE MORE THAN A YEAR AWAY AND
THAT'S WHAT I THINK ABOUT WHEN I
LOOK AT THE ON PROJECT OF THE
THING TO BE-- OBJECT THING TO
BE ACCOMPLISHED UNDER THE
QUALIFYING RULE IN YATES.

>> WHAT WE'RE REALLY DOING HERE,
IN THIS CASE, FIRST OF ALL THERE
IS SOMETHING, THAT EITHER SIDE
SEEMS TO HAVE MORE EQUITABLE
ARGUMENT.

WE HAVE THIS CONTRACT.
WE'LL SPLIT THE PROCEEDS, EXCEPT
WHEN I WIN.

SO THERE ACE, I THINK THERE ARE
SOME ISSUES AS FAR AS RICHMOND.
WE'RE DEALING WITH A STATUTE OF
FRAUDS, LEGISLATIVE ENACTMENT,
NOT COMMON LAW IN THIS CASE?

>> CORRECT.

>> THERE IS A CASE FROM '30s
CASE, YATES, IT IS NOT CLEAR AND
CREATES CONFUSION.

LOOKING AT STATUTORY
CONSTRUCTION AND IDEA AROUND THE
COUNTRY, THE SEEPS THE POINT
YOU'RE ADVOCATING FOR IS QUOTE,
THE MAJORITY RULE, WITH THE IDEA
THAT PEOPLE SHOULD NOT BE ABLE
TO BENEFIT FROM SOMETHING THAT
IS INTENDED TO AFFECT BOTH

PARTIES.

SO IF YOU COULD EXPLAIN, WHY
THIS IS, WHY YOUR INTERPRETATION
IS CONSISTENT WITH THE FLORIDA
STATUTE AND WHAT WE SAID IN
YATES, WHETHER THERE HAS TO BE,
WE HAVE TO PROCEED FROM--
RECEDE FROM YATES OR--

>> CERTAINLY.

AND THAT WAS THE POINT OF MY
INITIAL BRIEF TO THE COURT, THAT
THE STATUTE, THE ONE LINE IN THE
STATUTE IS VERY CLEAR.

IT IS UNAMBIGUOUS WHAT IT SAYS.

AND WE'D ASK THE COURT TO
INTERPRET THAT STATUTE TO MEAN
THAT EXACTLY WHAT IT SAYS.

IT SAYS OR MONEY AGREEMENT NOT
TO BE PERFORMED WITHIN THE SPACE
OF ONE YEAR FROM THE MAKING
THERE OFF.

SO UNLESS THE CONTRACT STATES
THAT IT IS GOING TO BE FOR
LONGER THAN A YEAR, OR BY THE
TERMS OF THE AGREEMENT, IT IS
INCAPABLE OF BEING PERFORMED
WITHIN A YEAR, THAT IT DOESN'T
FALL WITHIN THE--

>> YOUR BEST ANALOGY, EMPLOYMENT
CONTRACTS.

SO THEY WERE ACTING ON THEIR
CONTRACT FROM DAY ONE.

UP TILL YEAR 14.

>> YES.

>> WHICH WOULD BE AS IF THEY, IT
WAS EMPLOYMENT RELATIONSHIP,
SAY, YOU HIRE SOMEBODY AND YEAR
TO YEAR THEY'RE WORKING AND AT
SOME POINT, THEY ARE FIRED AND
THEN THE QUESTION IS, WELL THIS
CONTRACT SHOULD HAVE BEEN IN
WRITING?

>> CORRECT AND THAT'S THE WHOLE
LINE OF CASES THAT FINDS TO
PROTECT THE PERSON CONTRACTING
IN THE CONTRACT, PROTECTS THEM
FROM BOEING THROUGH AND WORKING
ALL THOSE YEARS AND DOING ALL
THE THINGS AS TIME GOES ON MONTH
TO MONTH, YEAR TO YEAR, DOING

THEIR END OF THE BARGAIN AND
SOMEBODY COMING ALONG LATER
TRYING TO NEGATE THAT CONTRACT
AND UNDER THE STATUTE, AND, THE
ISSUE WITH YATES IS YATES
DEFINES WHAT THE GENERAL RULE IS
BUT THEN QUALIFIES THE RULE WITH
SOMETHING THAT IS SLIGHTLY, IN
MY OPINION CONTRADICTORY TO THE
GENERAL RULE BECAUSE IT THEN
REQUIRES UNDER THE SAME SET OF
CIRCUMSTANCES INDICATED IN THE
GENERAL RULE THAT SECOND
ANALYSIS BE DONE TO LOOK INTO
THE INTENT OF THE PARTIES AND
OBJECT TO BE ACCOMPLISHED BY THE
CONTRACT.

AND IN THIS INSTANCE WE'RE
ASKING THE COURT TO EITHER
CLARIFY THE YATES CASE OR TO
INTERPRET 725.01 AS IT EXISTS
NOW TO REQUIRE THAT IN THE EVENT
THERE IS AN AGREEMENT EXPRESSLY,
FOR LONGER THAN A YEAR OR BY ITS
TERMS OR OBJECT TO BE
ACCOMPLISHED BY THE CONTRACT,
NECESSARILY EXTENDS BEYOND A
YEAR THAT THOSE ARE THE ONLY
CONTRACTS THAT WOULD BE REQUIRED
TO BE IN WRITING.

IN THIS INSTANCE APPLYING THAT
TO THE FACTS OF THIS CASE, WITH
PARTIES BEING INVOLVED IN A
ROMANTIC RELATIONSHIP, THEY
COULD HAVE DIED THE NEXT DAY.
THEY COULD HAVE WON THE LOTTERY
NEXT DAY, ALL THESE INDEFINITE
THINGS WHICH ARE AKIN TO
EMPLOYMENT AGREEMENT, IN OTHER
CASES WHICH FOUND THE STATUTE OF
FRAUDS DOESN'T APPLY, THAT THE
STATUTE OF FRAUD IN THIS CASE
CERTAINLY SHOULD NOT APPLY TO
BAR MY CLIENTS'S ENTITLEMENT TO
SEEK CONTRACTUAL RELATIONSHIP.
SO WE IN DOING SO ARE ASKING
COURT TO CLARIFY WRITES WITH
CERTIFIED QUESTION BUT WE FOLLOW
MORE IN LINE FACTUALLY WITH
JUDGE TORT AND JUDGE GRIFFIN'S

DISSENT, POINTING OUT THIS CASE IS NOTHING MORE THAN A TERM ENABLE AT WILL CONTRACT. BECAUSE OF THAT IT DOESN'T FALL WITHIN THE ACTION OF FRAUDS. AND ACTION BY MY CLIENT SHOULD BE NOT BARRED AS A RESULT OF THAT.

OUR ARGUMENT THAT THE STATUTE OF FRAUDS DOESN'T BAR AT ALL TO THE APPLY THE CONTRACT.

WE CITED TO THE COURT WE BELIEVE THERE IS CONFLICT IN LIGHT OF FACTUAL CASE BEFORE YOU FROM THE FIFTH DCA AND DECISIONS IN OTHER DCA ON OTHER SIMILAR FACT CIRCUMSTANCES GULF SOLAR VERSUS WEST FALL OUT OF THE SECOND DCA WHICH IS A VERY SIMILAR CASE WHAT WE HAVE HERE.

ORAL EMPLOYMENT CONTRACT FOR AN INDEFINITE PERIOD OF TIME. BOTH EMPLOYEES IN THAT CASE ADMITTED AND THERE WAS RECORD EVIDENCE THAT THEY BOTH EXPECTED AGREEMENT WOULD LAST LONGER THAN A YEAR.

THEY BOTH WANTED THE AGREEMENT TO LAST LONGER THAN A YEAR. BECAUSE THE CONTRACT ITSELF WAS FOR AN INDEFINITE PERIOD OF TIME AND COULD HAVE BEEN TERMINATED LESS THAN A YEAR, COULD HAVE BEEN ACCOMPLISHED LESS THAN A YEAR THE COURT IN THIS CASE OUT OF THE SECOND DCA HELD THAT THE STATUTE OF FRAUDS DOES NOT APPLY AND ALLOWED THE CONTRACT TO MOVE FORWARD, PRECISELY WHAT THEY'RE ASKING THE COURT HERE TO DO, IS RESOLVE THE CONFLICT BETWEEN FACTUAL CASES THAT ARE LIKE HERE WHERE THERE IS NO DEFINITIVE TERM STATED BETWEEN PARTIES, TO ALLOW PARTIES WHO FREELY CONTRACTED WITH ONE ANOTHER, IF THE FACTS BEAR OUT, TO HAVE THE BENEFIT OF THAT CONTRACT THEY HAVE ENTERED INTO WITH THE OTHER PARTY AND TO AVOID THE STATUTE

OF FRAUDS COMING ALONG AND
TAKING THAT AWAY FROM THEM.
SO WE WOULD ASK THE COURT IN
ADDITION TO THE CERTIFIED
QUESTION TO ALSO LOOK AT THE
CONFLICT IN SIMILAR FACTUAL
CASES BETWEEN DISTRICTS AND I
THINK THE FIFTH DCA ASKS THE
COURT TO DO THAT.

THE DIFFICULTIES HAVE BEEN FROM
A LITIGATING STANDPOINT, I'M
SURE FROM A JUDICIAL STANDPOINT,
IS TRYING TO LOOK AT THE GENERAL
RULE IN YATES AND THEN HAVING
LOOKED AT THAT RULE AND THE
COURT IN YATES FINDING THAT,
ALBEIT MANY DECADES AGO, FINDING
THAT THAT CASE FELL SQUARELY
WANT GENERAL RULE AND DID NOT
EVEN RESORT TO GOING TO THE
QUALIFYING RULE THAT THE STATUTE
OF FRAUDS DIDN'T APPLY TO THAT
CASE.

AND IN YATES THE CONTRACT IN
THAT CASE INVOLVED ONE PERSON'S
PROMISE TO PAY SOME BOND OF
ANOTHER PERSON AND THOSE BOND
WEREN'T DUE TO BE PAID FOR
ANOTHER FOUR YEARS.

THAT WAS IN THE EXPRESS
AGREEMENT.

AND THIS COURT IN YATES FOUND
THAT DESPITE THAT, DUE TO THE
FACTS THAT THOSE BOND COULD HAVE
BEEN PAID IN ADVANCE, THERE WAS
A PREPAYMENT PROVISION, COULD
HAVE BEEN PAID IN ADVANCE OF THE
FOUR YEARS.

COULD HAVE BEEN PAID THE NEXT
DAY IN FACT, THAT THE STATUTE OF
FRAUDS DID NOT BAR THE
ENFORCEMENT OF A ORAL AGREEMENT,
PROMISE TO PAY THOSE BOND.

SO, THIS CASE IS NO DIFFERENT
THAN THE ORIGINAL CASE IN YATES,
FROM THAT STANDPOINT TO THE
EXTENT THAT THIS CASE HAS NO
OBLIGATIONS GO BEYOND A YEAR,
THE FACTS THAT THIS CASE WENT
BEYOND A YEAR, THAT THE

RELATIONSHIP WENT BEYOND A YEAR
AND THEY CONTINUED TO DO THIS
FOR YEARS AND YEARS IS NO
DIFFERENT FROM ALL THE OTHER
CASES THAT WE'VE EXCITED IN
OUR-- CITED IN OUR BRIEFS.
THERE WERE EMPLOYMENT
RELATIONSHIPS WENT ON FOR 20
YEARS, 15 YEARS IN CASES WE HAVE
CITED, ALL DO NOT APPLIES,
STATUTE OF FRAUDS DO NOT APPLY
TO BAR THOSE CASE.

>> MAKE SURE, THIS IS NOT ISSUE
OF PARTIAL PERFORMANCE, RIGHT?
IN TERMS OF CONTRACTS IF IT WAS
A CONTRACT TO BUILD A AN
APARTMENT OR A HOTEL, THAT WAS
TO BE COMPLETED IN FOUR YEARS
HENCE.

>> SURE.

>> THAT SUBJECT TO THE STATUTE
OF FRAUDS?

>> I WOULD BELIEVE SO BECAUSE
THE EXPRESS TERMS OF IT SAY IT
IS GOING TO BE COMPLETED THEN.

>> NOT THE ISSUE THAT THEY WERE
PERFORMING UNDER THE CONTRACT
EVERY YEAR?

IT IS THAT IT IS OPEN-ENDED
RATHER THAN A PERIOD THAT IS--

>> CORRECT.

IT IS INDEFINITE, ALL THE CASE
LAW REFERS TO BEING INDEFINITE
TERM THAT IS PRECISELY WHAT WE
HAVE HERE.

IN ALL THE CASES REFER TO AN
INDEFINITE TERM.

ALL DO NOT APPLY.

THE STATUTE OF FRAUDS DO NOT
APPLY TO BAR ENFORCEMENT OF
THOSE CONTRACTS.

FOR EXAMPLE.

TERSES POMPARO, IT WAS OUT OF
THE FOURTH DC.

CONTRACT WITH ANOTHER GUY TO
SECURE HIS BOAT, \$150,000 BOAT.
PAID HIM \$100 A MONTH.

KEPT GOING ON FOR YEARS AND
YEARS.

ORAL AGREEMENT.

BOAT WAS STOLEN, RECOVERED,
THERE WAS \$36,000 IN DAMAGE,
THERE WAS ATTEMPT TO BAR
ENFORCEMENT OF CONTRACT BECAUSE
IT WASN'T IN WRITING, COURT
RULED THE STATUTE OF FRAUDS
DOESN'T APPLY BECAUSE INDEFINITE
PERIOD OF TIME DESPITE THE FACT
IT WENT ON FOR MONTHS AND MONTHS
AND YEARS.

>> SEEMS TO ME THESE CONTRACTS,
YOU'RE IN YOUR REBUTTAL, THE
POLICY ISSUES ARE, INFORM A LOT
OF OUT-OF-STATE CASES.

SEEMS THAT THESE CONTRACTS THAT
ARE ORAL ARE USUALLY THE MOST
SIMPLE OF CONTRACTS.

IN OTHER WORDS, THERE WAS
REALLY, NOT AN ISSUE, WE'RE
GOING TO DISPUTE THE TERMS OF
WHAT-- WELL, THEY MAY, WHICH
WOULD BE ANOTHER REASON YOU WANT
TO REDUCE AGREEMENTS TO WRITING
IS THAT, IN LOOKING AT THOSE
CASES, IS THAT, DOES THAT SEEM
TO BE THAT THESE ORAL CONTRACTS
ARE RELATIVELY SIMPLE, SHORT
CONTRACTS, EVEN IF THEY'RE,
THEY'RE NOT REDUCES TO WRITING?

>> THEY'RE NOT.

AND THEY SPAN THE FULL SPECTRUM
OF VALUE AND SIZE.

THE ONE CASE IN PARTICULAR IS
\$150,000 BOAT INVOLVED ON A
HANDSHAKE DEAL.

THERE ARE OTHER CASES INVOLVED
WHERE PEOPLE AGREED TO PERFORM
SERVICES THAT AMOUNT TO OVER
\$40,000 IN SERVICES TO BE PAID
UPON THE DEATH OF THE OTHER
PERSON.

THE COURTS HAVE FOUND DUE TO
INDEFINITENESS OF LIFE AND THAT
PERSON COULD HAVE DIED NEXT DAY
THAT IS ENFORCEABLE REGARDLESS
HOW LONG IT GOES ON.

I WOULD SUGGEST TO THE COURT
THAT THE WAY TO ADDRESS THAT IS
NOT, LEGISLATURE WANTED TO
ADDRESS IT FROM A MAGNITUDE

STANDPOINT WITH A DOLLAR AMOUNT,
PERHAPS THAT'S THE WAY TO DO IT
BUT FROM THE PURE LANGUAGE OF
THE STATUTE THAT'S NOT A
CONCERN.

[INAUDIBLE]

I RESERVE THE REST OF MY TIME.

>> COUNSEL.

JUSTICE CANADY RECUSED FROM THE
CASE AS YOU CAN SEE.

[INAUDIBLE].

SECONDLY WE HAVE A SCHOOL HERE
FROM MIAMI.

WE HAVE, THANK YOU, WHAT IS YOUR
NAME, MA'AM?

>> [INAUDIBLE]

>> BOTH OF YOUR TEACHERS GO TO
THE SCHOOL?

>> YES.

>> WE HAVE 23 HERE.

AND THEY'RE 7th AND 8th
GRADERS.

8th AND 9th.

OKAY, THANK YOU.

THOSE WERE MY FAVORITE SCHOOL
YEARS.

I DID THEM TWICE.

[LAUGHTER].

>> [INAUDIBLE]

>> WELCOME TO THE COURT AND HOPE
YOU ENJOY THE ARGUMENTS.

GO AHEAD AND PROCEED.

>> WITH ALL DUE RESPECT I THINK
WHAT IS BEING REQUESTED HERE IS
FOR THE COURT TO OVERTURN YATES
AND THE CONCEPT OF STARE DECISIS
HAS TO BE PROMINENT IN THIS
DISCUSSION SEEMS.

>> SEEMS TO ME, READING YATES,
COULD STAND FOR BOTH
PROPOSITIONS YOU CERTAINLY AGREE
THE APPELLATE COURTS HAVEN'T
BEEN ABLE TO AGREE WHAT YATES
MEANS?

>> I DISAGREE WITH THAT.

>> JUDGE LAWSON, EVEN THE
MAJORITY SAID, WHATEVER YOU DO,
PLEASE WRITE OUT WHAT YOU MEANT
TO HOLD IN YATES.

>> I THINK YATES IS CRYSTAL

CLEAR.

I REALIZE THREE JUSTICES
DISSENTED IN TERMS OF
JURISDICTION IN THIS PARTICULAR
CASE, HOWEVER, WITH ALL DUE
RESPECT TO THOSE THREE, I THINK
IT IS IMPORTANT TO HAVE A
WRITTEN OPINION REARTICULATING
YATES BECAUSE WHAT'S HAPPENED,
WE HAVE WILLISTON ON CONTRACTS,
WE HAVE SECOND RESTATEMENT OF
CONTRACTS, NOT INTERPRETING THE
STATUTE OF FRAUDS THE WAY YATES
AND STATE OF FLORIDA AND CASES
ALL THE WAY BACK TO COMPTON,
BACK IN THE OLD ENGLISH LAW WERE
INTENDED.

YATES CLEARLY IS THE LAW OF THE
STATE OF FLORIDA.

>> YOU AGREE IF IT IS, IF WE GO
WITH THE MAJORITY OPINION IN THE
FIFTH DISTRICT, THAT, THIS COURT
IN TERMS OF ITS INTERPRETATION
OF THE FLORIDA STATUTE WOULD BE
IN THE MINORITY?

>> IN TERMS OF, FROM A NATIONAL
PERSPECTIVE?

>> YEAH.

>> THERE'S NO DOUBT.

>> THE OTHER QUESTION, BUT WE'RE
STILL IN THE END, THIS IS NOT,
YOU TALKED ABOUT THE COMMON LAW
BUT WE'RE INTERPRETING--

>> STATUTE.

>> A STATUTE.

WHETHER THE STATUTE IS ALIGNED.

>> CORRECT.

>> AND SAYS WHAT?

>> INSTEAD OF WHAT?

>> AND IT SAYS WHAT?

WHAT DOES THE STATUTE--

>> WHAT DOES THE STATUTE SAY?

THE STATUTE SAYS IF THE
AGREEMENT IS NOT TO BE PERFORMED
WITHIN ONE YEAR, A CAUSE OF
ACTION DOES NOT LIE.

IN ESSENCE IT'S VOID.

>> DO YOU AS AGREE IT IS CLEAR
AND PLAIN IN THE WAY WE
INTERPRET THAT YOUR ARGUING TO

INTERPRET IT?

>> WHAT?

>> YOU ALSO, I'M SORRY--

>> I'M JUST NOT HEARING IT.

>> DO YOU ALSO AGREE THE STATUTE IS PLAIN AND UNAMBIGUOUS BUT YOU ARE ARGUING THIS PLAIN AND UNAMBIGUOUS STATUTE SHOULD BE INTERPRETED THE WAY THE FIFTH DISTRICT SAID?

>> WE ARTICULATED CLEARLY IN OUR BRIEF WE THINK THE STATUTE IS AMBIGUOUS.

>> YOU THINK IT IS AMBIGUOUS.

>> BUT IT HAS BEEN DEFINED.

IT HAS BEEN DEFINED BY YATES VERSUS BALL.

>> IF WE DISAGREE WITH YOU, THAT YATES IS SO CLEAR, THEN ARE WE, LET'S JUST ASSUME THERE IS NO YATES.

EXPLAIN WHY THE INTERPRETATION OF THE DEFENSE AND MAJORITY OF JURISDICTION WHERE YOU'VE GOT THESE ONGOING CONTRACTS THAT ARE BEING PERFORMED ON A YEARLY BASIS, YOU KNOW, LIKE AGAIN, SOMEBODY HAS HIRED TO DO, TO CHECK A HOUSE EVERY MONTH AND YOU KNOW, THAT GOES ON AND ON, SO IT IS BEING PERFORMED BUT IT IS NOT COMPLETED WITHIN A YEAR.

>> CORRECT.

>> BUT IT IS CAPABLE OF BEING COMPLETED, IF YOU FIRE THE PERSON AT THE END OF THE YEAR OR IF THEY HAD STRUCK THE LOTTERY IN THIS CASE THEY HAD WON, WHY ISN'T THAT THE LOGICAL INTERPRETATION OF THE STATUTE.

>>> BECAUSE EXACTLY THE REASON THAT IS STATED IN YATES.

IF YOU GO TO YATES, IT SAID VERY PREDICATE FOR APPLICATION OF STATUTE OF FRAUDS IS LOSER CASUAL STATEMENT GALVANIZED WITH FRAUD.

IN YATES, WITH ALL DUE RESPECT TO COUNSEL, IT WASN'T A FOUR-YEAR DEAL.

THE BONDS HAD A FOUR-YEAR DROP
DEAD TERM.
HOWEVER IT WAS CLEAR THAT IT WAS
FOR THERE TO BE INSTANTANEOUS OR
SOON CREATION OF A COMPANY.
NOW FAST FORWARD TO THIS CASE TO
ANSWER YOUR QUESTION MORE
DIRECTLY.
THERE ARE FOUR INDICIA OF
FRAUDS.
REMEMBER THIS CASE IS DECIDED ON
DIRECTED VERDICT.
NO ONE HEARD MY CLIENTS
TESTIMONY.
MY CLIENT WILL SAY THAT THESE
PARTIES RELATIONSHIP WAS
DISSOLVED.
SHE WAS LIVING WITH HER MOTHER
BECAUSE OF VIOLENCE IN THE
RELATIONSHIP.
>> IS THAT IN THE RECORD?
>> NO, BECAUSE DECIDED ON
DIRECTED VERDICT.
>> WHATEVER THE RECORD IS,
YOU'RE SAYING IT IS NOT --
>> I'M SAYING PROCEDURALLY IT IS
NOT AS SIMPLE AS--
>> YOU MAY WIN ON THE FACT THAT
THE CONTRACT HAD ALREADY BEEN
TERMINATED OR THAT YOUR CLIENT
DIDN'T BREACH IT?
WE'RE REALLY JUST TALKING ABOUT
WHETHER YOU GET IN, WHETHER THEY
GET IN THE COURTHOUSE DOOR TO BE
ABLE TO CLAIM A BREACH OF
CONTRACT, RIGHT?
>> GOT IN THE COURTHOUSE DOOR.
THE CASE ON REHEARING WAS
DECIDED ADVERSELY TO THEM.
THE ISSUE THAT WAS CERTIFIED TO
THIS COURT--
>> THE ORIGINAL OPINION WAS
DECIDED--
>> THEY WON INITIALLY.
REHEARING ENBANC.
THEY LOST.
>> WHAT IS THE POINT OF THERE
ARE FACTS?
YOU'RE SAYING--
>> I'M SAYING THE FACTS SHOW

FRAUD, EVEN THE FACTS THAT WERE
EDUCED AT TRIAL SEVERELY
IMPEACHED THE PLAINTIFF IN TERMS
OF THIS CLAIM.

>> THEN YOU WIN ON ISSUE THAT
GOES TO A JURY THAT THE CONTRACT
ISN'T WHAT THEY SAID IT WAS?

>> I BELIEVE WE WILL WIN WHEN WE
GO BACK ON THE IMPLIED CONTRACT.
HOWEVER I THINK YATES VERSUS
BALL--

>> BECAUSE THERE IS AN IMPLIED
CONTRACT CLAIM?

>> FIFTH DCA SAID, WHICH, THERE
WERE TWO COUNTS.

REMEMBER, SEVERAL AMENDMENTS BUT
IN THE FINAL ANALYSIS THERE IS
TWO COUNTS.

WE HAVE AN EXPRESS CONTRACT AND
WE HAVE AN IMPLIED CONTRACT.

THE, THE TRIAL COURT GAVE A
DIRECTED VERDICT ON BOTH.

THE FIFTH DCA REVERSED
ULTIMATELY AS TO THE IMPLIED
CONTRACT.

SO WE'RE GOING BACK ON THAT.
HOWEVER YATES VERSUS BALL IS THE
LAW OF THE STATE OF FLORIDA.

EVEN IN 2013, THIS COURT,
EVERYBODY, EVEN JUSTICE CANADY
WHO DISSENTED, DIDN'T DISSENT ON
THE GROUNDS WHICH I'M RAISING
WHICH IS, SPECIFICALLY THE
QUESTION THAT EMERGES FROM
RESOLUTION BY US IS WHETHER OR
NOT WE WILL ADOPT BY JUDICIAL
ACTION THE DOCTRINE OF
PROMISSORY ESTOPPEL AS SORT OF
COUNTER ACTION TO THE
LEGISLATIVE CREATED STATUTE OF
FRAUDS.

THIS WE DECLINED TO DO.

STARE DECISIS IS CLEAR.

THIS COURT ISSUED AN OPINION IN
1938.

THERE HAS BEEN AMENDMENTS TO
THIS STATUTE SINCE THAT TIME.
THIS COURT IN OTHER OPINIONS HAS
SAID WHEN AMENDMENTS OCCUR AND
THE LANGUAGE DOESN'T CHANGE THE

LEGISLATURE IS PRESUMED TO UNDERSTAND THIS COURT'S OPINIONS.

THIS COURT'S OPINIONS ARE IN LINE WITH ENGLISH JURISPRUDENCE ALL THE WAY BACK TO THE 1600s. YATES VERSUS BALL IS A VERY SIMPLE RULE TO STATE.

THE QUESTION I GUESS IS WHETHER THE COURT WANTS TO OVERRULE YATES VERSUS BALL.

IF YOU DO I THINK YOU NEED TO SAY IT DIRECTLY FOR SOME REASON BECAUSE IT WOULD BE CLEARLY DIRECT IF SOMEHOW THE COURT WANTS TO ALIGN ITSELF WITH THE MAJORITY BECAUSE THE COURT FEELS IT IS FAIR FOR CASES TO RISE AND FALL ON THEIR OWN EQUITIES I WOULD HUMBL Y SUBMIT THAT I THINK THAT'S INAPPROPRIATE.

>> AGAIN, THIS IS REALLY LEGISLATIVE, IT IS A LEGISLATIVE DECISION THAT WE'RE INTERPRETING, NOT OUR OWN PERSONAL PREFERENCE.

>> HOW YOU INTERPRET IT.

>> IN YATES VERSUS BALL.

THE RULE IS, STATED VERY SUCCINCTLY, THAT, IF THERE IS NO TIME AGREED FOR THE COMPLETE PERFORMANCE OF THE CONTRACT, IF FROM THE OBJECT TO BE ACCOMPLISHED AND SURROUNDING CIRCUMSTANCES, IT CLEARLY APPEARS THE PARTIES INTENDED, IT SHOULD EXTEND FOR A LONGER PERIOD THAN A YEAR, IT IS WITHIN THE STATUTE OF FRAUDS.

AND THE FIFTH DCA CERTIFIED THE ISSUE THAT IT IS CLEAR AND IN ESSENCE THE FIFTH DCA IS JUST ASKING YOU TO TELL IT THAT YATES VERSUS BALL STILL APPLIES.

IT IS, IT, WHEN WE TAKE ALL THESE CASE AND ALL THESE BINDERS AND SUMMARIZE THEM, THE CASES FROM THE DCA THAT ARE IN CONFLICT FROM YATES VERSUS BALL ARE NOT IN CON WITH BROWNING.

THEY'RE SIMPLY IN CONFLICT WITH THIS COURT'S OPINION IN YATES VERSUS BALL BECAUSE IT IGNORES YATES VERIES IS BALL.

GULF SOLAR, ONE OF THE CASES THEY RELY, ARGUABLY IS NOT IN CONFLICT WITH YATES VERSUS BALL WITH ALL DUE RESPECT TO COUNSEL BOTH PARTIES DID NOT AGREE IT WAS INTENDED TO GO FOR LONGER THAN A YEAR.

THE PLAINTIFF TESTIFIED TO THAT. BUT IT WAS A SUMMARY JUDGMENT ISSUE.

ON SUMMARY JUDGMENT THE PLAINTIFF ALSO, IT WAS ALSO CLEAR FROM THE EVIDENCE THAT THERE WAS A SALES PROPOSAL THAT THE PLAINTIFF WAS SUPPOSED TO CREATE.

AND DIDN'T WITHIN A SHORT PERIOD OF TIME.

THE ACTION WAS BROUGHT WITHIN ONE YEAR.

THERE WERE MANY INDICATIONS THAT THAT CASE IS NOT IN CONFLICT WITH GULF SOLAR HOWEVER, BYNUM, THE THIRD DCA JUMPS ON GULF SOLAR AND MISINTERPRETS IT AND USES WILLISTON AND SECOND RESTATEMENT OF CONTRACTS AND WE'RE OFF AND RUNNING.

>> WHAT ABOUT CONTRACTS TERMINABLE AT WILL.

>> IF IT IS TERMINABLE IT IS INDICATED IT IS NOT GOING LONGER THAN A YEAR.

SOMEHOW MY CLIENT--

>> WAS INTENDED.

YOU HIRE SOMEBODY AND INTEND FOR THEM TO STAY WITH YOU AS, WHETHER IT IS AS A MAINTENANCE PERSON OR EMPLOYEE, FROM AS LONG AS THEY DO A GOOD JOB.

>> WHICH CLEARLY HE DIDN'T, BY HIS OWN WORDS IN THIS PARTICULAR CASE.

THE HOUSE WAS CONDEMNABLE.

IF IT HAD BEEN INSPECTED BY HIS OWN TERMS, BY HIS OWN STATEMENT

AT TRIAL.

THAT'S ONE ISSUE OF FRAUD WHICH
I WOULD SHOW THE COURT.

IF I CAN RELATE THERE'S FOUR
INDICATIONS.

HE VERY CLEARLY TESTIFIED WHAT
HIS PURPOSE WAS AT TRIAL WAS TO
GAIN AN INTEREST IN THE PROPERTY
WHICH IS CLEARLY BARRED BY THE
STATUTE OF FRAUDS.

AND HE SAID I, YOU KNOW, HAVE A
RIGHT TO THIS IN PART BECAUSE WE
HAD THIS AGREEMENT THAT I WOULD
BE A HANDYMAN.

UPON INSPECTION THAT FELL APART
BECAUSE HE COULD ONLY PRODUCE
\$1700 WORTH OF INVOICES,

AND IN ADDITION,
HIS WORK LOWERED THE
VALUE OF THE PROPERTY.

DCF WOULD NOT HAVE ALLOWED A
CHILD TO LIVE THIS THAT
PARTICULAR HOME.

THERE WAS AN INSPECTION WHEN ONE
OF HIS CHILDREN WERE THERE.

HE SAID THE AGREEMENT WAS ONLY
ENFORCEABLE WHILE THEY HAD A
RELATIONSHIP.

HE HAD A RELATIONSHIP WITH
SOMEBODY ELSE, DEBBIE--

[INAUDIBLE]

THE RECORD IS CLEAR THAT HIS
TESTIMONY THAT THIS RELATIONSHIP
WAS INTACT IS A FRAUD.

AND THAT'S EXACTLY WHAT YATES V.
BALL REFERENCES.

THAT'S WHY WE HAVE THIS, BECAUSE
WE SHOULDN'T PERMIT PEOPLE BASED
ON LOOSE STATEMENTS, LOOSE ORAL
STATEMENTS THAT ARE NOT IN
WRITING TO COME BACK YEARS AND
YEARS LATER AND TRY TO CREATE
SOME, PRESS AGREEMENT.

EXPRESS AGREEMENT.

IN ENGLISH LAW THIS CAME INTO
PLAY LU LORD NOTING HAM'S WORK
AND SUR NORTH, THEN LORD NORTH
BECAUSE OF THE CREATION OF THE
WRIT OF ASSUMPTION.

AND BECAUSE THE WRIT CAME INTO

PLAY, THERE WAS A LOT OF PERJURY
THAT CAME INTO EFFECT.

I WOULD SUBMIT THAT WE'VE SHOWN
IN OUR BRIEF A SUBSTANTIAL
AMOUNT OF PERJURY OR A
SUBSTANTIAL AMOUNT OF DIFFICULTY
IN TERMS OF CREDIBILITY.

THAT'S EXACTLY WHY YOU WANT TO
CLOSE THE DOOR TO THIS.

THERE HAS TO BE AN END TO IT.

AND THE INTERPRETATION THAT
THEY'RE URGING TO YOU THAT
SOMEHOW THE AGREEMENT DOESN'T
SAY THAT ON ITS FACE IT'S A YEAR
AND A DAY-- OR STRIKE THAT, IF
IT DOES SAY IT'S A YEAR AND A
DAY OR FOUR YEARS BECAUSE OF
COUNSEL'S EXAMPLE TO USE THE
WORLD CUP, THAT THAT SHOULD BE
BARD, BUT IT SHOULDN'T BE BARRED
IF THERE'S NO TERM IN IT AND
WE'RE HERE 16 YEARS LATER OR 14
YEARS LATER IN THIS CASE
LITIGATING ABOUT WHAT WAS SAID
14 YEARS AGO.

THAT IS SUSCEPTIBLE TO PERJURY
AND SUSCEPTIBLE TO SUBORDINATION
OF PERJURY BY OTHER PARTIES, AND
WE WOULD CONTEND THAT EVERY CASE
THAT SQUARELY DEALT WITH YOUR
DECISION OR THE COURT'S DECISION
IN YATES V. BALL HAS ADDRESSED
IT AND DECIDED IT AND THAT IT IS
A VALID AND MOST EQUITABLE
PUBLIC POLICY.

THANK YOU VERY MUCH.

>> REBUTTAL?

>> ALL DUE RESPECT, COUNSEL
MISSES THE--

>> SORRY, YOU NEED TO--

>> SORRY.

WITH ALL DUE RESPECT, COUNSEL
MISSES THE ISSUE HERE.

THESE ARE NOT FACTUAL DISPUTES
WE'RE HERE ABOUT TODAY.

THE FACTS OF RELEVANCE, THE
FACTS OF RECORD ARE THAT THERE
WAS AN AGREEMENT BETWEEN THESE
TWO PARTIES THAT THEY WERE GOING
TO PLAY THE LOTTERY TOGETHER,

BUY TICKETS TOGETHER, AND IF THEY WON, THEY'D SPLIT THE PROCEEDS.

THOSE ARE THE FACTS THAT ARE RELEVANT HERE.

UNFORTUNATELY, AT TRIAL WE RESTED OUR CASE, AND THE JUDGE GRANTED THE DIRECTED VERDICT, AND THE APPEALS FOLLOWED.

BUT THE GENERAL RULE, COUNSEL CITED TO THE QUALIFYING RULE IN YATES, BUT THE CONFUSION ARISES BETWEEN THE COMPARISON.

THE FIRST RULE THAT YATES COMES OUT WITH FOLLOWING THAT ONE LINE FROM THE STATUTE WHICH HASN'T REALLY CHANGED SINCE THEN.

THE GENERAL RULE SAYS NO DEFINITE TIME WAS FIXED BY THE PARTIES FOR THE PERFORMANCE OF THEIR AGREEMENT, AND THERE IS NOTHING IN ITS TERMS TO SHOW THIS COULD NOT BE PERFORMED WITHIN A YEAR ACCORDING TO ITS INTENT AND THE UNDERSTANDING OF THE PARTIES, IT SHOULD NOT BE CONSTRUED AS BEING WITHIN THE STATUTE OF FRAUDS.

COUNSEL READ THE SECOND PART OF IT WHICH IS A QUALIFYING RULE WHICH I WON'T READ AGAIN.

BUT THE CONFUSION LIES WITH THE COURT'S AND THE UNDERLYING DISTRICT'S EFFECTUATING THAT-->> BUT WHAT IN THE WORLD DO WE DO WITH THE NEXT PARAGRAPH WHICH TALKS ABOUT THE GENERAL RULE CITIZEN SO SATE-- AS SO STATED IS SUBJECT TO THE QUALIFYING RULE AND GOES ON WHEN NO TIME IS STATED TO LOOK AT THESE OTHER FACTORS.

WHAT DO WE DO WITH THAT LANGUAGE?

IT'S CLEARLY THERE.

>> I UNDERSTAND THAT.

IF YOU PUT THEM SIDE BY SIDE, BOTH OF THEM START WITH, THE GENERAL PREMISE IS WHEN NO TIME IS AGREED FOR COMPLETED

PERFORMANCE.

AND THERE'S TWO DIFFERENT STANDARDS THAT ARE TO BE APPLIED WITH THE GENERAL AND QUALIFYING RULE, AND I DON'T KNOW HOW TO RECONCILE THOSE.

AND THAT'S BEEN THE SOURCE, I BELIEVE, OF THE CONFUSION.

>> THAT'S WHAT YOU'RE ASKING US.

>> I'M ASKING THE COURT TO CLARIFY AND ALSO ASKING THE COURT TO MAKE IT SIMPLE LOOKING AT THE STATEMENT THAT CONTRACTS NOT TO BE PERFORMED WITHIN ONE YEAR HAVE TO BE IN WRITING.

AND THERE'S PEOPLE OUT THERE WHO RELY UPON THE SIMPLENESS OF A TORT AND HAVING AN INTERPRETATION SUCH AS THIS THAT CAUSES THE CONFUSION IT'S CAUSED, I WILL SUBMIT TO THE COURT, WILL CAUSE FURTHER BE CONFUSION TO PEOPLE INVOLVED IN CONTRACTS.

AND SPEAKING TO JUSTICE PARIENTE'S A COMMENTS, THESE AGREEMENTS HAPPEN EVERY DAY. AND THEY NEED TO HAPPEN EVERY DAY.

NOT EVERY AGREEMENT TO MOW SOMEBODY'S LAWN OR WATCH SOMEBODY'S BOAT HAS TO BE REDUCED TO WRITING AND SIGNED, NOR DOES THE LEGISLATURE REQUIRE THAT.

AND THE PARTIES WHO ENTER INTO THESE AGREEMENTS NEED TO BE ABLE TO RELY UPON THE FACT THEY'RE DOING THIS, THEY'RE PUTTING OUT MONEY TO DO THIS, THEY'RE PUTTING OUT TIME TO DO THIS, AND THEY'LL REAP THE BENEFITS OF WHAT THEY'RE CONTRACTING AND BARGAINING FOR.

I'M ASKING THE COURT TO CLARIFY THAT ISSUE, TO BRING IT BACK TO WHAT THE STATUTE SAYS AND AVOID THE CONFUSION THAT THE YATES CASE HAS CAUSED.

THANK YOU FOR YOUR TIME.

>> THANK YOU FOR YOUR ARGUMENTS.