Woodside Village Condominium Assn. v. Adolph S. Jahren

NEXT CASE ON THE COURT'S CALENDAR THIS MORNING IS WOODSIDE VILLAGE VERSUS JAREN AND MR. DEFURIO.

YES, YOUR HONOR. MY NAME IS JAMES DEFURIO. WE REPRESENT WOODSIDE VILLAGE CONDOMINIUM ASSOCIATION. THIS APPLIES TO THE ABILITY TO WOODSIDE VILLAGE CONDOMINIUM ASSOCIATION OWNERS TO CHANGE THEIR DECLARATIONS. IN 1.011-A, THIS GUARANTEES TO ALL UNIT OWNERS THE RIGHT TO AMEND THEIR DECLARES DECLARATION. AS A MATTER OF FACT THE PARTICULAR LANGUAGE THAT YOU WILL FIND IN THAT SUBSECTION IS THAT THEY HAVE A GUARANTEE AS TO, QUOTE, ALL MATTERS, UNQUOTE, EXCEPT FOR CERTAIN MATTERS THAT ARE SPECIFICALLY ACCEPTED IN THE STATUTE, UNDER SUBPARAGRAPH 4 AND 8 OF THAT STATUTE, WHICH IS NOT AT ISSUE IN THIS INSTANT CASE.

IN LOOKING AT THE OVERALL SCHEME, I AM TRYING TO UNDERSTAND WHETHER YOUR POSITION IS THAT, UNDER THESE KINDS OF CIRCUMSTANCES, THERE IS ABSOLUTELY NO RESTRAINTS ON WHAT A DECLARATION CAN DO, AS AMENDED. FOR EXAMPLE, LET ME GIVE AWE COUPLE OF HYPOTHETICALS. -- LET ME GIVE YOU A COUPLE OF HYPOTHETICALS. IF A FAMILY PLANS FOR AN ADULT PERSON, WHO WILL BECOME DEPENDENT LATER AND LATER IN YEARS, THEY BUY AN UNIT IN A CONDOMINIUM AND SET IT UP IN A TRUST AND THEN THE SOCIAL SECURITY IS USED TO PAY THE EXPENSES, THROUGH A LEASE, THAT WOULD BE PROHIBITED, WOULD IT NOT? JUST AS A FAMILY THAT MAY BUY A CONDOMINIUM UNIT FOR A DISABLED CHILD AND SET THAT UP IN THE FORM OF A TRUST, SO THAT THE CHILD CAN BE TAKEN CARE OF. THIS TYPE OF THING WOULD INVALIDATE THE LEASE AND THE PURPOSE. BURGER KING BUYS AN UNIT, CORPORATE OWNERSHIP, FOR ITS CEO, AND THEY LEASE THAT BACK TO THE CEO, ALL OF THESE THINGS, ACCORDING TO YOUR VIEW, THAT OTHER FOLKS WHO HAVE LIVED THERE, COME DOWN FOR THREE OR FOUR MONTHS, IT IS OKAY, IF THEY LEASE IT WHEN THEY ARE NOT THERE, BUT UNDER THESE OTHER CIRCUMSTANCES, ALL OF THOSE INDIVIDUALS WOULD BE PRECLUDED FROM LIVING IN OR OWNING THAT PROPERTY, BECAUSE YOU WOULD HAVE CHANGED THE RULES OF THE GAME, ESSENTIALLY, ONCE YOU HAVE PURCHASED, DEPENDENT UPON THAT DECLARATION.

NO. WE DO NOT TAKE THAT ABSOLUTIST POSITION. IF, IN FACT, A DECLARATION AMENDMENT WOULD BE CONTRARY TO A STATUTE, THEN, OBVIOUSLY, IT WOULD NOT BE VALID. YOUR EXAMPLE, WITH REGARD TO A HANDICAPPED PERSON, FOR INSTANCE, THE ASSOCIATION, AS A MATTER OF LAW, IS OBLIGATED TO MAKE A REASONABLE ACCOMMODATION TO A HANDICAPPED PERSON.

THAT IS A FEDERAL LAWSUIT, THOUGH, IS IT NOT? THAT WOULD NOT ACCOMMODATE A PRIVATE FAMILY THAT HAS PURCHASED AN UNIT THROUGH A TRUST MECHANISM. YOU ARE TALKING ABOUT THE DISCREPANCY BETWEEN THOSE WHO ARE PERMITTED TO LEASE AND THOSE WHO ARE NOT, UNDER THE CIRCUMSTANCE. I DON'T UNDERSTAND THAT TO BE A PRIVATE PURCHASER. IS THAT A PRIVATE PURCHASER?

MAYBE I AM NOT UNDERSTANDING THE QUESTION, BUT THE TEST WOULD BE, GIVEN YOUR HYPOTHETICALS, WHETHER OR NOT THE AMENDMENT WOULD BE CONTRARY TO A LAW. IF THERE IS NO LAW THAT PROHIBITS IT, AND IN FACT UNDER THE RULING OF WHITE EGRET, IF THE CONDOMINIUM IS FOR LIVING PURPOSE, THEN IT WOULD NOT BE ENFORCEABLE.

SO IF IT IS NOT A RATIONAL PURPOSE, THEN IT WOULD NOT BE ENFORCEABLE?

OUR ISSUE IS THAT THE TEST IS MUCH TOO BROAD. ASSUMING THAT WHAT THE COURT WAS CALLED UPON TO DO, THAT THERE IS NO FEDERAL OR STATE STATUTE THAT PROHIBITS THE AMENDMENT, WHAT THE COURT SHOULD DO IS LOOK ON THE FACE OF THE AMENDMENT, AND IF, ON THE FACE OF THE AMENDMENT, IT APPEARS THAT THERE IS A CONDOMINIUM PURPOSE THAT THE AMENDMENT IS DESIGNED TO ADDRESS, THEN IT IS VALID. THE PROBLEM WITH A REASONABLENESS STANDARD, AS WE SEE IT, IS IT INVITES COURTS TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE UNIT OWNERS. PLEASE RECALL THAT AMENDMENTS TO THE DECLARATION REQUIRE THE PARTICIPATION DIRECTLY OF THE UNIT OWNERS. TIP CHRIRTION IN A SUPER MAJORITY STATUS -- TYPICALLY, IN A SUPER MAJORITY STATUS, THERE WAS, IN A PARTICULAR CASE, REQUIRED THAT AT LEAST TWO-THIRDS OF THE UNIT OWNERS NEEDED TO PASS AN AMENDMENT, FOR IT TO ACTUALLY PASS. THIS IS DISTINGUISHED FROM ACTIONS TAKEN BY THE BOARD OF DIRECTORS. WHICH WE WOULD ARGUE IS THE LONG-STANDING LAW IN THE STATE OF FLORIDA, IS THAT THE ACTIONS OF THE BOARD OF DIRECTORS MUST PASS A TEST OF REASONABLENESS, PRIMARILY BECAUSE THE PARTICIPATION OF THE UNIT OWNER IS NOT DIRECT IN THAT CASE. THEY ARE ABLE TO PARTICIPATE, WITH REGARD TO THE DECISIONS OF THE DIRECTORS, ONLY INSOFAR AS THEY ARE PERMITTED TO ELECT THOSE DIRECTORS ON AN ENTER MIGHTENT BASIS. OUR POSITION, REALLY, IS THAT WHICH HIDDEN HARBOR VERSUS BASSO DESCRIBED, AND THAT IS WHEN THE UNIT OWNERS HAVE VOTED TO AMEND THEIR DECLARATION, THAT THERE SHOULD BE SOME DEFERENCE TO THEIR JUDGMENT.

IS THERE A DIFFERENCE BETWEEN -- WHATEVER THE STANDARD IS GOING TO BE, BETWEEN THE AMENDMENT AND THE ORIGINAL DECLARATION, AS TO THE TEST FOR THE COURT TO APPLY, AS TO WHETHER IT SHOULD BE UPHELD?

NO. AGAIN, I HAVE LOOKED AT THE STATUTE.

BUT ON THAT, ISN'T THERE A PROBLEM, REALLY, BECAUSE -- IN NOT MAKING A DISTINCTION, BECAUSE IN ONE INSTANCE, AN OWNER IS -- HAS FULL NOTICE, SO THIS IS WHAT THE DECLARATION SAYS, AND IS MAKING AN INFORMED DECISION AS TO WHETHER THEY ARE GOING TO PURCHASE A CONDOMINIUM IN THAT PARTICULAR COMMUNITY OR NOT, WHEREAS SUBSEQUENTLYLY, THERE CAN AT LEAST BE MADE AN ARGUMENT THAT THERE ARE, THEN, RESTRICTIONS ON ALIENABILITY AND ON SALEABILITY, AND AS JUSTICE LEWIS WAS POINTING OUT, CAN EVEN FRUSTRATE THE ORIGINAL PURPOSE OF THE PURCHASE. SO SHOULDN'T THERE BE TWO DIFFERENT STANDARDS, BECAUSE OF A BASIC FAIRNESS CONSIDERATION?

WE WOULD ARGUE NO, PRIMARILY BECAUSE WE WANT THE COURT TO BE REMINDED THAT THE DECLARATION OF CONDOMINIUM ESSENTIALLY ESTABLISHES A CONTRACTUAL RELATIONSHIP, THAT WHEN AN UNIT OWNER PURCHASES THAT CONDOMINIUM, THEY ARE PURCHASING THAT CONDOMINIUM, SUBJECT TO THE TERMS AND CONDITIONS OF THAT DECLARATION. IN THIS PARTICULAR CASE, AS IN ALMOST EVERY CONDOMINIUM SETTING, THERE IS A PROVISION IN THE ORIGINAL DECLARATION, WHICH GRANTS TO ALL THE UNIT OPENERS, THE RIGHTS TO AMEND THEIR DECLARATION. ANY PERSON THAT PURCHASES AN UNIT IS ON -- AT THE VERY LEAST, CONSTRUCTIVE NOTICE, THAT WHATEVER PURPOSE THEY MIGHT HAVE PURCHASED THAT CONDOMINIUM UNIT FOR, MIGHT SOMEHOW BE CHANGED BY THE ACTIONS OF THE UNIT OWNERS LATER ON. AND, AGAIN, THIS AMP SIZES THE FACT THAT WE ARE DEALING WITH A CONTRACT PRINCIPLE HERE AS WELL AS STATUTORY PRINCIPLES. INDEED, WHEN YOU LOOK AT THE STATUTE AND IN PARTICULAR, 718.104, THE, AND I DON'T KNOW -- I HAVE FORGOTTEN EXACTLY WHAT SUBSECTION IT IS, BUT IT SPECIFICALLY STATES THAT THE DECLARATION OF CONDOMINIUM MAY CONTAIN COUGH NEPTS -- COVENANTS AND RESTRICTIONS PERTAINING TO USE, TRANSFER, AND THE USE OF THE UNITS. AND SO THERE IS NO QUESTION THAT, FOR INSTANCE, IN THIS CASE, DEALING WITH A LEASING RESTRICTION, THAT REGULATING LEASING IS, IN FACT, PROPER CONDOMINIUM PURPOSE.

IN TERMS OF YOUR STANDARD, THOUGH, AND IN PARTICULAR THIS LEASE RESTRICTION, ONE OF THE PURPOSES WAS TO DECREASE TRANSIENT RESIDENCY. CAN YOU EXPLAIN HOW ALLOWING LEASES ONLY FOR LESS THAN ONE YEAR PROMOTES THAT INTEREST?

THE PURPOSE OF THE AMENDMENT WAS TO NOT INCREASE TRANSIENCEY IS BUT TO INCREASE OWNER OCCUPANCY. THE IDEA WAS THAT THE UNIT OWNERS, WHO HAD PURCHASED THEIR UNITS FOR THE SOLE PURPOSE OF LEASING THEM AND NOT LIVING WITH THEM AT ALL, WOULD HAVE AN OPTION, THAT THEY COULD EITHER SELL THEIR UNITS OR, ALTERNATIVELY, THEY COULD LEASE THEIR UNITS OUT ON A BASIS NOT TO EXCEED NINE MONTHS IN FACT IT WOULD ENHANCE THE VALUE YOUTHFUL THE UNITS. A LET'S GO BACK TO THAT FOR A MINUTE. TO INCREASE OWNER OCCUPANCY, BUT IN THIS PARTICULAR SITUATION, AT LEAST NINE MONTHS OF EVERY YEAR, IT COULD BE LEASED OUT. CORRECT?

ABSOLUTELY.

IS THERE ANY THERE ANY RESTRICTION -- IS THERE ANY RESTRICTIONS ON THE NUMBER OF TYPES, IN A GIVEN YEAR, THAT YOU CAN LEASE IT?

IT CAN BE LEASED FOR LONGER THAN NINE MONTHS IN ANY 12-MONTH PERIOD.

COULD YOU, IN OTHER WORDS, GO AHEAD AND LEASE IT TO NINE DIFFERENT PEOPLE IN ONE MONTH?

YOU COULD.

SO WOULDN'T THAT, REALLY, INCREASE, ENCOURAGE PEOPLE TO ACTUALLY HAVE A MORE TRANSIENT POPULATION THAN IF YOU ENCOURAGED STABLE LONG-TERM LEASES?

NO. AS THE AFFIDAVIT OF PAUL SAFFALIO, THE PRESIDENT OF THE ASSOCIATION SHOWED, THAT, IN FACT WHAT WAS EXPERIENCED WAS THAT THOSE UNITS THAT HAD BEEN PURCHASED TO BE LEASED OUT EXCLUSIVELY WERE EITHER SOLD OR, ALTERNATIVELY, THERE WERE INSTANCES, AND THE INTENT WAS, OF THE ASSOCIATION, TO, IF THERE WAS A PERIOD OF TIME WHERE THE UNIT OWNER WOULD BE ENCOURAGED TO RESIDE IN THE UNIT, EVEN ON A SHORT-TERM BASIS, FOR INSTANCE FOR THE OTHER THREE MONTHS, THAT THAT WOULD ENCOURAGE THE SORT OF USE OF THE PROPERTY THAT WAS DEEMED DESIRABLE, AS AN OWNER OWNER-OCCUPATION --- OWNER-OUNCEY IS -- DOMINATED COMMUNITY.

-- AN OWN OTHER OCCUPANCY DOMINATED COMMUNITY.

THEY DON'T HAVE ANYTHING TO DO WITH WHAT GOES ON INSIDE, DOES IT?

THE INTENT OF THE UNIT OWNER WAS THAT THE OWNER LIVE IN THE UNIT ON A SHORT TIME BASIS, AT LEAST, EVEN IF IT WERE THREE MONTHS, THAT THERE WOULD BE THE LIKELIHOOD AND HAVE THE DESIRE TO KEEP THE PROPERTY UP AND TREAT IT AS AN OWNER-OCCUPIED DWELLING.

DOES THIS REALLY FORCE THE OWNER TO LIVE THERE AT ALL? I MEERNKS THE OWNER CAN STILL RENT IT OUT NINE MONTHS AND LET IT GO VACANT FOR THREE MONTHS.

THAT'S CORRECT. AND I THINK THAT GOES TO THIS WHOLE QUESTION OF HOW FAR DO WE GO WITH THIS TEST. AND WHEN YOU LOOK --

AREN'T YOU FORCING PEOPLE OUT? ISN'T DOESN'T THIS AMENDMENT REALLY FORCE PEOPLE OUT?

NO, IT DOES NOT, BECAUSE THE --

DIDN'T YOU JUST TELL US THAT MOVIES THE PEOPLE WHO, REALLY, HAVE BOUGHT THESE AS INVESTMENTS AND, REALLY, WERE LEASING THEM OUT, HAD SOLD THEM?

SOME HAVE BUT I DON'T KNOW IF MOST. SOME HAVE. I DON'T KNOW IF MOST. THE -- WHAT HAS TO BE MADE AWARE OF, HERE, IS THAT THE ENFORCEMENT ACTION TAKEN BY THE ASSOCIATION, IN THIS CASE AND IN OTHER CASES, IS AGAINST LEASES THAT WERE ENTERED INTO AFTER THE DATE OF THE AMENDMENT. NOT BEFORE.

BUT THEY PURCHASED THE PROPERTY LONG BEFORE THIS AMENDMENT.

PARDON ME?

DID THEY NOT PURCHASE THIS PROPERTY LONG BEFORE THE AMENDMENT?

BEFORE THIS AMENDMENT, YES.

BEFORE, EVEN, THE CHANGE IN THE NUMBERS THAT ARE USED TO CHANGE THE DECLARATION. THE PURCHASES WERE MADE.

I AM NOT SURE OF THAT FACT, YOUR HONOR.

DON'T YOU SEE SOME DESTABILIZATION IN THE CONDOMINIUM CONCEPT, IF WE GET INTO A SITUATION THAT, FOLKS, WE WANT THIS KIND OF LIVING, IF THAT IS WHAT THE PUBLIC WANTS TO HAVE, BUT HOW MANY PEOPLE WILL, REALLY, WANT TO BUY INTO THAT CONCEPT, IF THEY REALIZE IT HAS A -- WE DECIDE -- TOMORROW THEY MAY DECIDE THAT METHODISTS CAN'T LIVE HERE, BECAUSE IT WOULD BE BETTER IF WE HAVE ONE DENOMINATION GO DOWNSTAIRS TO USE OUR RECREATION ROOM. IT MAY BE BEST THAT A BROTHER AND SISTER CAN'T OWN, BECAUSE WE WOULD RATHER HAVE MARRIED PEOPLE.

IT WOULD CLEARLY BE AN IMPROPER PURPOSE, AND IT WOULD BE AGAINST THE LAW.

HOW IS IT ANY BETTER PURPOSE HERE, IF WE ARE SUBSIDIZING THOSE WHO ARE THERE FOR THREE MONTHS, MAYBE NOT AT ALL, BUT THOSE WHO INVESTED, FAIRLY AND INTELLIGENTLY, BASED ON THE DECLARATIONS, BUT THEY CAN'T DO THE SAME THING.

THERE IS NO SUBSIDY BEING -- TAKING PLACE, IN THIS PARTICULAR CASE. THE ONLY THING THAT IS TAKING PLACE IS THAT, WITH REGARD TO NEW LEASES THAT MAY ARISE AFTER THE DATE OF THE AMENDMENT, THAT THEY HAVE TO CONFORM TO THE AMENDMENT. THERE IS NO QUESTION THAT THE HOPE IS THAT THE PERCENTAGE OF OWNER OCCUPANCY WILL INCREASE. THAT PURPOSE IS A PROPER CONDOMINIUM PURPOSE, AS SET FORTH IN A WHOLE LINE OF CASES. SEA GATE, CROOP, FLAGLER FEDERAL.

WHAT DO YOU PERCEIVE THE PUBLIC POLICY OF THE STATE OF FLORIDA, ACTING THROUGH THE LEGISLATURE AND THE STATUTORY SCHEME, TO BE, WITH REFERENCE TO CONDOMINIUMS? IS IT NEUTRAL OR DOES IT FAVOR SOME PARTICULAR STYLE OF LIVING OR SOME PARTICULAR POLICY? COULD YOU ARTICULATE THAT FOR US?

I THINK THE POLICY OF THE STATE OF FLORIDA IS THAT WHICH IS SET FORTH IN 718.110. AND THAT IS THAT DEFERENCE HAS TO BE GIVEN TO THE UNIT OWNERS, TO CONTROL THEIR COMMUNITY, BY VIRTUE OF AMENDMENTS.

WHAT DOES -- WHAT DOES THAT STATUTE SAY?

THAT STATUTE, IN SUBSECTION 1-A, STATES THAT THE UNIT OWNERS HAVE A RIGHT TO AMEND THEIR DECLARATION, EVEN WHEN THE DECLARATION IS SILENT, AS TO THEIR RIGHT TO AMEND.

THAT THEY MAY AMEND, AS TO QUOTE UNQUOTE, ALL MATTERS BIRTION A TWO-THIRDS --, BY A TWO-THIRDS MAJORITY, SO EVEN WHEN THE DECLARATION IS SILENT, THAT THEY HAVE A RIGHT TO AN AMENDMENT.

THIS SPEAKS TO THE AMENDMENT. I AM ASKING YOU A BROADER POLICY QUESTION, WITH REFERENCE TO -- ARE WE TALKING ABOUT A POLICY THAT FAVORS ALL OWNER OCCUPANCY OF CONDOMINIUMS? ARE WE TALKING ABOUT A POLICY THAT IS NEUTRAL, OR ARE WE TALKING ABOUT A POLICY THAT SUPPORTS FLEXIBILITY IN CONDOMINIUM OWNERSHIP, JUST LIKE IT WOULD, YOU KNOW, IF YOU OWNED A RESIDENCE IN A PLACE? WHAT -- IS THERE ANY POLICY IN THE STATUTORY SCHEME, WITH REFERENCE TO THOSE ISSUES?

I DON'T THINK THERE IS A POLICY SET FORTH IN CHAPTER 718, BETWEEN OWNERSHIP --

SO YOU ARE SAYING IT IS NEUTRAL.

I WOULD SAY IT IS NEUTRAL. SO THE REGULATION OF LEASING --

IF THE POLICY IS NEUTRAL, OKAY, THEN WHY WOULDN'T WE RECOGNIZE THE SAME RIGHTS, THEN, WITH REFERENCE TO INDIVIDUAL OWNERSHIP OF CONDOMINIUM UNITS THAT WE DO, FOR INSTANCE, IN SINGLE FAMILY RESIDENTIAL, WHICH, AT THE OWNER'S DISCRETION CAN BE LEASED IN ANY FORM?

BECAUSE CONDOMINIUMS ARE SOLELY A CREATURE OF STATUTE. CONDOMINIUMS WOULDN'T EXIST, BUT FOR THE FACT THAT THERE IS A STATUTE. ALSO CONDOMINIUMS ARE UNIQUE, AS HIDDEN HARBOR VERSUS BAZELLE STATES AND WHITE STATES, BECAUSE YOU HAVE PEOPLE SHARING UNITS THAT ARE SHARING COMMON FACILITIES, SHARING COMMON ELEMENTS, AND ARE RESPONSIBLE FOR THE CARE AND UP KEEP AND MAINTENANCE OF THOSE COMMON FACILITIES, SO THESE ARE UNLIKE SINGLE FAMILY RESIDENCES.

WOULD A PERSON, FOR INSTANCE, UNDER THIS SCHEME, BE ABLE TO ENTER INTO A NINE-MONTH LEASE AND JUST UP THE RENT FOR THE NINE MONTHS, AND THEN LET THE PEOPLE THAT LEASED IT LIVE FREE FOR THE OTHER THREE MONTHS IN THE UNIT?

NO. I DON'T THINK THAT WOULD BE PERMITTED, UNDER THE AMENDMENT.

WHY NOT?

IT WOULDN'T RESTRICT LEASING TO NINE MONTHS. I DON'T KNOW. I WOULD HAVE TO LOOK AT THE DECLARATION, TO DETERMINE WHETHER OR NOT THERE IS A LIMITATION AS TO OCCUPANCY BY PERSONS WHO ARE NEITHER GUESTS, LESSEES, OR OWNERS. I HAVEN'T LOOKED AT THE DECLARATION FOR THAT PURPOSE.

YOU ARE IN YOUR REBUTTAL TIME.

THANK. I WILL RESERVE FOR REBUTTAL. THANK YOU.

MAY IT PLEASE THE KOUMPLT MY NAME IS ROBERT WALKER, AND I HAVE THE HONOR OF REPRESENTING JERRY JAHREN AND GARY McLARN, THE NONRESIDENT CONDOMINIUM OWNERS ATWOOD SIDE VILLAGE. I THOUGHT I KNEW SOMETHING ABOUT CONDOMINIUM LAW, UNTIL I GOT INTO THIS PROCESS, AND THEN I WAS REMINDED WHAT HAPPENED BACK IN THE 1980s, WITH SOVEREIGN IMMUNITY AND THE EVOLUTION OF THAT PROCESS, BECAUSE WHAT I HAVE SEEN, IN MY REVIEW OF THE CASE IN THIS STATE AS WELL AS IN OTHER STATES WHICH RELY UPON, FREQUENTLY, THE LAW OF FLORIDA, BECAUSE WE SEEM TO HAVE BEEN IN THE VANGUARD OF THE CONDOMINIUM MOVEMENT, IS THAT THEY ARE ALL OVER THE PLACE. THE SECOND DISTRICT'S OPINION, WHICH IS ON REVIEW HERE, CERTAINLY IS UNIQUE. IT QUOTES, AND OF

COURSE I HAVE TO ACCEPT IT, THAT IS THE POSITION I AM ON, SOME OF THE OTHER CASES. FLAGLER, SEA GAIT CASES, WHICH IT -- SEA GATE CASES, WHICH IT DISAPPEAR PROVED, SOME OF THE CASES NOT FOLLOWED OUT BY THE DISTRICTS WHICH I SHOULD THEM. SOME IN FLAGLER HAS BEEN CITED BY FOUR OTHER STATES, FOUR OTHER CASES THROUGHOUT NATION, ONE DISAPPROVINGLY, ONE APPROVINGLY AND TWO SORT OF AMBIVALENT.

IF THIS POSITION WERE IN PLACE WHEN YOUR CLIENTS PURCHASED THE CONDOMINIUM UNIT, WOULD THERE BE A PROBLEM?

I DON'T SEE A PROBLEM. THE CASES SEEM TO BE UNIFORM THAT, IF THEY ARE ON SPECIFIC NOTICE AS TO A SPECIFIC RESTRICTION, THEY TAKE SUBJECT TO RESTRICTION, BE IT PETS OR CHILDREN OR LEASING RESTRICTIONS. THE COURTS SPEAK TO THE CONCEPT OF NOTICE, AND WE FIND THAT, INTERVENING THIS CONCEPT OF A ZIPPER CLAUSE, WHICH, IN ONE CASE, AND I THINK THAT IS FLAGLER, IN WHICH THE BANK OWNED THE PROPERTY, AND THEY SAID, AND IT IS THE ONLY CASE THAT SAID THIS, THAT A PROPERTY OWNER CAN RETROACTIVELY HAVE THIS INTEREST THAT HAS ADVERSELY AFFECTED, AND NO OTHER CASE AND NO OTHER COURT HAS ADOPTED THAT POSITION.

ISN'T THERE A FUNDAMENTAL INCONSISTENCY, THOUGH, BETWEEN ACCEPTING A PROVISION THAT MAY BE IN THE CONDOMINIUM DECLARATION OR PROVISIONS AT THE OUTSET, WHEN THE UNIT IS PURCHASED, AND THE FACT THAT THERE IS A RIGHT TO AMEND, AND PRESUMABLY, IF THAT IS A PROVISION THAT IS SUBJECT TO AMENDMENT, THEN DO YOU THEN HAVE A WAY TO AMEND, THEN ISN'T IS IMPLICIT, IN THE RIGHT TO AMEND, THAT YOU CAN AMEND IT TO BE WHAT WE ARE TALKING ABOUT NOW?

I HAVE TO AGREE THAT THAT IS PROBABLY THE LAW. THE ISSUE, HERE, IS NOT SO MUCH THE ABILITY OF THE CONDOMINIUM ASSOCIATION TO ENACT THE AMENDMENT, THROUGH ITS -- WHATEVER PROCEDURES THEY ADOPT THAT IS CONSISTENT WITH THE STATUTE. IT IS THE IMPACT OF THAT POSITION DECISION UPON A PROPERTY OWNER, WHO BOUGHT UPON RELIANCE OF CONDITIONS THAT WERE EXISTENT WHEN THEY MADE THE PURCHASE. HAD THEY BEEN AWARE, HAD THEY BEEN SPECIFICALLY ACTUAL KNOWLEDGE, DEEMED KNOWLEDGE, IT DOESN'T MATTER. THE CASE IS CLEAR THAT, EVEN IF THERE WAS A RESTRICTION THERE, THAT THEY HAD IT, EVEN IF THEY DIDN'T HAVE ACTUAL KNOWLEDGE.

BUT THEY KNEW IT, IF THEY KNEW THERE WAS A RIGHT TO AMEND.

IN THAT CASE, EVERY ARTICLE IS SUBJECT TO AMENDMENT.

NO, BUT, THERE IS A RESTRICTION ON THE RIGHT TO AMENDMENT, AND -- ON THE RIGHT TO AMEND, AND THAT IS THAT IT CANNOT VIOLATE A STATE OR A FEDERAL LAW OR A LOCAL LAW.

THAT'S CORRECT.

AND SO IT IS NOT AN UNFETTERED RIGHT TO AMEND.

I WOULD AGREE. AND THE CASES WITH REGARD TO PETS AND CHILDREN, SEEM TO BE RELATIVELY MORE COMMON THAN ANY OTHER, ARE ILLUSION TAKETIVE OF THAT PARTICULAR -- ILLUSIONTIVE OF THAT PARTICULAR CONCEPT, AND EACH AND ALL OF THE CASES THAT I HAVE READ, SPECIFICALLY BRUCKNER OUT OF 1984, IT MAY BE PREDICTIVE, BUT WITH REGARD TO PARENTS THAT HAD CHILDREN, WHEN THERE WAS NO RESTRICTION BANNING CHILDRENTIC TYPICALLY UNDER THE AGE OF 12, SOMETIMES 16 IN PLACE, IT IS SAID THAT THEY CAN'T MAKE THAT RETROACTIVE. NOW, WHETHER KIDS OR PETS, FOR THAT MATTER, ENJOY SOME HIGHER CONSTITUTIONAL OR PUBLIC POLICY PROTECTION HAS NEVER BEEN DECIDED BY ANY COURT, AND IN FACT, I THINK, THAT IS PROBABLY ONE OF THE JOB FOR THIS COURT TO DO, IS TO REVISE SOME OF THESE PARAMETERS, SO THAT PEOPLE AND BANKS, FINANCIAL INSTITUTIONS THAT

FINANCE THESE TYPES OF RESIDENTIAL OWNERSHIP WILL KNOW WHAT RISK THEY ARE ASSUMING, BY BUYING A CONDOMINIUM OR FINANCING A CONDOMINIUM UNIT, WITH SUCH A ZIPPER CLAUSE THAT, EXCEPT FOR STATUTORY PROHIBITIONS, COULD BE OPENED BY THE MAJORITY.

WOULD THERE BE A PROHIBITION ON AN ORIGINAL CONDOMINIUM GREEMENT SAYING THAT THERE WILL BE NO AMENDMENT IN REGARD TO LEASING PROVISIONS COULD THEY, ALSO, AMEND THAT?

I WOULD SUPPOSE THAT, BY A 100 PERCENT VOTE OF ALL OWNERS, POSSIBLY IN A SMALLER CONDOMINIUM DEVELOPMENT, THEY COULD, THEN, AMEND THAT, BECAUSE ONE GOVERNMENT CAN'T BIND ANOTHER GOVERNMENT TO A POLICY. I DON'T THINK ONE GROUP OF MEMBERS CAN'T ELIMINATE A POSSIBILITY TO CHANGE FOR ALL MEMBERS IN THE FUTURE, BUT I THINK IN A SENSE LIKE THAT, IT WOULD HAVE TO BE A 100 PERCENT VOTE.

WELL, BUT, FOLLOWING UP ON WHAT JUSTICE HARDING'S ASKING, THE COURTS, REALLY, HAVE A HARD TIME GETTING IN, AND EVALUATING POLICY REASONS BEHIND AMENDMENTS, AS A BASIS FOR WHETHER WE ARE GOING TO -- THE COURT WOULD UPHOLD AN AMENDMENT OR REJECT AN AMENDMENT. I MEAN, WE HAVE PRETTY MUCH GOT TO LOCK IN HERE AND RECOGNIZE THAT CONDOMINIUM OWNERSHIP IS A STATUTORY CREATURE, AND THAT THERE HAS GOT TO BE SOME FINITE BASIS UPON WHICH WE MAKE A DETERMINATION AS TO WHETHER AN AMENDMENT WORKS OR DOESN'T WORK AND WHETHER IT IS IN ACCORDANCE WITH THE LAW IS ABOUT AS GOOD AS WE CAN DO, ISN'T IT?

I AGREE, AND THE CASES SPEAK TO THE ROLE OF THE JUDICIARY. THEY DON'T SPEAK CONSISTENTLY OR UNIFORMLY, AS TO THE ROLE OF THE JUDICIARY, IN DETERMINING WHETHER THESE ARE AC BIGUOUS, WHETHER THEY -- AMBIGUOUS, WHETHER THEY VIOLATE PUBLIC POLICY, WHETHER THERE IS A CONSTITUTION ISSUE INVOLVED, WHETHER IT WORKS AN IMPRESSIVE HARDSHIP ON SOMEBODY. A LOT OF THESE CASES TURN UPON THE FACT THAT THERE WAS A SAFE HARBOR POSITION FOR AN OWNER THAT ALLOWED THEM TO BACK OUT OF THEIR INVESTMENT, WITHOUT SIGNIFICANT MATERIAL HARM. THIS WOODSIDE IS THE FIRST CASE THAT I AM AWARE OF IN THIS CASE, WHERE THERE WAS NO SAFE HARBOR. I THINK FLAGLER MAY HAVE BEEN THE ONE WITH THE BANK, TOO, BUT IT HASN'T BEEN RELIED UPON TO ANY DEGREE. THERE IS NO "OUT" FOR THESE PEOPLE. FIRST THEY HAD THE UNLIMITED ABILITY TO BUY AS MANY UNITS AS THEY WANT. RESTRICTED THAT TO THREE. RESTRICTED THAT -- ALWAYS HAD THE 12-MONTH LEASING PROVISION, BUT THE FACT OF THE MATTER WAS THAT THEY WERE JUST RUBBER STAMPED, AS THEY TYPICALLY ARE. PEOPLE BOUGHT THESE CONDOMINIUMS, WITH THE EXPECTATION OF EITHER RETIRING IN THEM DOWN THE ROAD OR RENTING THEM OUT FOR INVESTMENT PROPERTY.

EACH ONE OF THESE AMENDMENTS WAS DONE IN ACCORDANCE WITH WHAT THE DECLARATION INDICATED IS THE WAY THAT YOU HAD TO ADOPT AN AMENDMENT. CORRECT?

THAT'S TRUE.

AND THERE ISN'T ANY FEDERAL OR STATE LAW WHICH WOULD PROHIBIT HAVING THAT TYPE OF RESTRICTION, IS THERE?

THERE IS NO.

AND SO GOING BACK TO WHAT JUSTICE HARDING -- HOW DO WE GET ANY FURTHER ALONG WITH THAT, WITHOUT GETTING THE COURT INTO THE SEEMINGLY UNENDING SITUATIONS OF HAVING TO DETERMINE WHETHER ONE POLICY OR ONE AMENDMENT IS BETTER THAN ANOTHER?

I HAVEN'T SEEN THE COURTS MAKING DETERMINATIONS ALONG THOSE LINES, AS YOU HAVE

SUGGESTED. MOSTLY, IT HAS COME DOWN TO THE INTERRUPTION OR THE TRUNKATION OR ELIMINATION OF A RIGHT OR BENEFIT OR OBLIGATION THAT WAS -- THAT THE PERSON HAD, WHEN THEY BOUGHT THE CONDOMINIUM, AND SOMETHING VALUABLE HAS BEEN TAKEN FROM THEM.

SO WOULDN'T THAT BE, THEN, FOR EVERY AMENDMENT, AGAIN, YOU AGREE THAT, NOT ONLY IN THIS CASE, DID THE CONTRACTOR THE DECLARATION OF CONDOMINIUM, AT THE TIME OF PURCHASE, PROVIDE THAT THERE COULD BE AMENDMENT, BUT THE STATUTE SPECIFICALLY PROVIDES FOR THE RIGHT TO AMENDMENT. WITH THAT IN MIND, HOW WOULD YOU ARTICULATE THE TEST, THEN, THAT SHOULD BE APPLIED TO ANY AMENDMENT? I MEAN ANY AMENDMENT THAT IS GOING TO CHANGE SOMETHING THAT EXISTED AT THE TIME AND PRESUMABLY BE, HAVE A, BE DIFFERENT FROM THE OWNER'S EXPECTATIONS, SO WHAT IS THE TEST? UNDER YOUR -- YOU KNOW, YOU HAVE SAID THAT THE COURTS HAVE BEEN ALL OVER THE PLACE. IF YOU GOT TO WRITE THE TEST, WHAT WOULD YOU WRITE IT AS?

THE TEST, IF I COULD DO IT, I SAID GO TO THE -- I WOULD GO TO THE WORTHINGTON CONDOMINIUM OWNERS ASSOCIATION VERSUS BROWN, AN OHIO CASE THAT REFERRED BACK TO A FLORIDA CASE, HIDDEN HARBOR AND SEA GATE, AND THE MAJORITY SAID THAT SUCH USE RESTRICTIONS MUST MEET A REASONABLENESS TEST. NOW, THE QUESTION IS WHAT CONSTITUTES A REASONABLENESS.

WHO MAKES THAT DETERMINATION?

SORRY?

WHO MAKES THAT DETERMINATION? THE COURT?

THE COURT, ULTIMATELY, HAS TO SIT IN JUDGMENT UPON DISPUTES ABOUT WHO IS RIGHT OR WRONG IN ANY SITUATION. IF PARTIES CAN'T AGO GREE. I WOULD -- OBVIOUSLY WE DON'T WANT TO ENTANGLE THE COURTS IN EVERY SINGLE AMENDMENT THAT OCCURS.

WELL, DO YOU THINK THAT THAT WOULD BE POSSIBLE TO AVOID?

LOOKING AT THE PROLIFERATION OF LAWSUITS TODAY AND THE NATURE OF THOSE LAWSUITS, I DON'T KNOW HOW THE COURTS CAN AVOID LITIGATION, BY COMING UP WITH EITHER A HARD AND FAST RULE THAT ALL SUBSEQUENT AMENDMENTS, IF THEY ARE PASSED BY THE MAJORITY, ARE PRIMA FACIE EFFECTIVE AND REASONABLE. IN THIS CASE --

ISN'T THAT A BETTER TEST AGAINST REASONABLENESS, IF YOU ARE TALKING ABOUT OBJECTIVE, THAN YOU ARE SAYING, IN SEA GATE, THAT WAS THE ONE THAT SAID YOU COULDN'T LEASE AT ALL, BUT THERE WAS A HARDSHIP PROVISION?

THERE WAS A HARDSHIP PROVISION.

ARE YOU SAYING IT IS BETTER TO SAY THAT YOU CAN LEASE FOR UP TO NINE MONTHS EVERY YEAR? YOU WOULD RATHER HAVE ONE THAT SAID YOU COULDN'T LEASE AT ALL?

TO GO TO NO LEASING AT ALL, AFTER SOMEONE HAS BOUGHT SIX NUNTS YOOUNTS, AND SAY WHEN THESE LEASES EXPIRE, YOU HAVE GOT TO GET RID OF THESE UNITS OR YOU, ONE OWNER, HAVE TO OCCUPY ALL SIX THAT, IS UNREASONABLE AS APPLIED. THAT CRIES OUT FOR A HARDSHIP PROVISION, AND IN ONE CASES, THE SECOND DCA CASE, THE HARRINGTON CASE, THEY GAVE THEM TWO YEARS TO HAVE THE PROPERTY SOLD AFTER THEY HAD A BABY, BUYING THE PROPERTY WITH THE KNOWLEDGE THAT CHILDREN UNDER THE AGE OF 12 WERE BANNED. OBVIOUSLY A BABY WOULD QUALIFY. THEY GAVE THEM TWO YEARS, AND THE COURT EMPHASIZED THAT. THE COURT, IN ALL OF THESE CASES, EMPHASIZED THE FACT THAT THE 96

PERCENT VOTE AT SEA GATE. WHY DID THEY SAY 96 PERCENT? WHY DID THEY MAKE REFERENCE TO THE UNIQUE TOURIST ENVIRONMENT IN MIAMIY? THEY SETTLE ON NUANCES IN THESE VARIOUS CASES, WHICH, IF WE HAD SOME SORT OF COMMON FORMULA THAT PEOPLE COULD LOOK TO, WOULD BE UNNECESSARY, BUT IT IS ALMOST CASE BY CASE EXAMINATION OF THE FACTS OF EACH CASE.

IT SEEMS TO ME THAT YOU ARE CRITIZING THE FACT THAT CASES ARE ALL OVER THE PLACE, BUT YET YOU ARE INVITING US TO SAY THAT IS WHAT THE TEST SHOULD BE, ALL OVER THE PLACE.

I, AGAIN, GO BACK TO THE SOVEREIGN IMMUNITY ANALOGY, WHERE WE HAD AN INTERNATIONAL CARRIER AND ALL OF THESE FOUR CLASSES OF THIS AND THAT, AND IT WENT UP THE LINE, UNTIL FINALLY IT WAS DISTILLED INTO SOMETHING MANAGEABLE. BEFORE THAT, IT WAS ALL OVER THE PLACE. THAT IS WHAT WE HAVE NOW. WE HAVE SOMETHING THAT IS UNMANAGEABLE, BECAUSE THERE IS NOT AN UNIFORM AND CONSISTENT STANDARD, AND THAT IS WHAT WE NEED NOW. IF THE COURT AGREES --

I HIM HAVING TROUBLE THAT YOU SAID IF YOU HAD TO WRITE IT, YOU WOULD WRITE "REASONABLENESS", AND HOW WOULD YOU DEFINE REASONABLENESS? THERE IS NOT A SET STANDARD FOR REASONABLENESS.

THAT IS WHERE THE BROWN COURT CAME UP WITH A THREE-PART STANDARD, WHICH ISN'T SO DIFFERENT FROM SOME OF THE STANDARDS WE HAVE SEEN IN THESE CASES COMING BACK TO US. THE FIRST QUESTION IS REASONABLENESS. BROWN POSED THREE QUESTIONS. THE FIRST ONE IS, IN APPLYING THE, THE FIRST QERTION APPLYING THE TEST OF REASONABLENESS, WHETHER THE DECISION OR RULE WAS ARBITRARY OR CAP RISH US. THIS REQUIRES, AMONG OTHER THINGS, THAT THERE BE SOME RATIONAL RELATIONSHIP OF THE DECISION OR RULE, TO THE SAFETY AND ENJOYMENT OF THE THE CONDOMINIUM. THE COURT WAS ASKING QUESTIONS BEFORE, ABOUT THE RATIONALE RELATIONSHIP BETWEEN THE MOTIVE AND THE PURPOSE OF THE CONDOMINIUM ASSOCIATION AND THE ACTUAL AMENDMENT THAT WAS DRAFTED TO FOSTER THAT PURPOSE. IT IS INCONSISTENT. IT CERTAINLY CAN BE APPLIED INCONSISTENTLY. SO THERE IS A QUESTION OF WHETHER IT PASSES THE FIRST TEST. THE SECOND QUESTION IS WHETHER THE DECISION OR RULE IS DISCRIMINATORY OR EVENHANDED. IT PROTECTS AGAINST THE IMPOSITION BY A MAJORITY OF A RULE OR A DECISION, REASON ALOE ITS FACE, AND -- REASONABLE ON ITS FACE, AND THOSE WERE THE WORDS THAT WE HEARD BEFORE, AS TO A MINORITY, BECAUSE ITS EFFECT IS TO ISOLATE AND DISCRIMINATE AGAINST A MINORITY.

IF WE GO BACK TO THING THAT IS CANNOT BE CHANGED BY DECLARATIONS AND BY STATUTE, SUCH AS COMMON ELEMENT, PERCENTAGE OF OWNERSHIP, SUCH AS THAT, SO IS THERE ANYTHING IN THE STATUTE THAT SAYS THAT YOU CAN'T CREATE THESE TWO CATEGORIES OF THE NINE MONTH LEASE AND NOBODY ELSE CAN LEASE. IS THERE ANYTHING AT ALL, IN A STATUTE, FEDERAL OR STATE, THAT PROHIBITS THIS CONDOMINIUM FROM DOING THAT?

NOT AT ALL. NOT AT ALL.

SO, THEN, BASICALLY, IF WE WERE SAYING, YOU KNOW, MAYBE WE SHOULD HAVE SOME DISCLOSURES ON THESE CONDOMINIUM FORMS, YOU KNOW, YOU BUY IT. THEY CAN DO ANYTHING TO YOU THAT THEY WANT, UNLESS PROHIBITED BY STATUTE, WOULD KEEP THE COURTS OUT OF IT AND LET THE LEGISLATURE HANDLE IT. IS THAT A BETTER WAY TO DO IT?

I AM NOT A BANKER, BUT I HAVE TO SUSPECT, AT LEAST PRESUME THAT SOME OF THESE UNITS ARE FINANCED, AND IF THAT WERE THE RULE, THEN FINANCING IS GOING TO TOTALLY EVAPORATE, BECAUSE JUST AS HAPPENED IN THE FLAGLER CASE AND HASN'T HAPPENED SINCE, FINANCIAL INSTITUTIONS ARE NOT GOING TO FINANCE ANOTHER CONDOMINIUM, IF THAT INVESTMENT CAN BE IMPAIRED BY THAT TYPE OF A RULE.

IT SEEMS TO ME THE BANKERS WANT SOMETHING THAT IS CONSISTENT IN WHAT THE BANKERS WANT, AND THAT IS A DECLARATION THAT SAYS, UNDER WHAT AMENDMENTS CAN DO AT THE TIME OF THE DECLARATIONS BEING FILED, WHEN YOU JUST HAVE A BLANK DECLARATION GOING IN. YOU CAN HAVE ANY KIND OF AMENDMENTS. EVERYBODY KNOWS YOU CAN AMEND, AS LONG AS YOU DO IN IN ACCORDANCE WITH THE DECLARATION AND THE STATUTE.

EXACTLY, AND THAT IS STILL POSSIBLE, WITH THIS ZIPPER CLAUSE, WITH REGARD TO ANY SUBJECT MATTER THAT IS NOT PROHIBITED OR LIMITED IN SOME WAY BY STATE OR FEDERAL LAW.

AREN'T YOU, ALSO, ASSUMING THAT THE MAJORITY, POTENTIALLY, WOULD AMEND THIS TO THE DETRIMENT OF THEIR OWN PROPERTY VALUES?

WE ARE ASSUMING, AS IN ANY ELECTION, THAT THEY ARE ACTUALLY -- THEY ARE KNOWLEDGEABLE ABOUT WHAT IS GOING ON, AND THEY ARE GOING TO MAKE AN INFORMED CHOICE. I SUPPOSE WE HAVE TO ASSUME THAT. PAST PRACTICE NOTWITHSTANDING. IT DOES DEFY LOGIC, TO BELIEVE THAT THEY WOULD PASS AN AMENDMENT THAT WOULD BE DETRIMENTAL TO THEIR OWN INTERESTS. ALTHOUGH THIS AMENDMENT, WHEN LOOKED AT AND PICKED APART FOR ITS POTENTIAL, IN TERMS OF HOW IT IS APPLIED, SUFFERS FROM THE SAME DEFECTS.

YEAH. BUT THERE WAS EVIDENCE IN THE TRIAL COURT, WAS THERE NOT, THAT THERE WAS NO DETRIMENT TO THE VALUE?

THERE WAS.

AND THAT IS WHAT THE COURT CONSIDERED?

THAT'S CORRECT.

SO WHAT WOULD BE WRONG WITH THE TEST THAT SAYS A PRIME FARB REASONABLE AND -- PRIMA FACIE REASONABLE AND SHIFTS THE BURDEN TO THE OWNER, TO SHOW THAT IT IS ARBITRARY AND CAP RISH US, AND HERE WE ARE LEFT WITH THE SITUATION AS TO WHETHER THIS ONE IS ARBITRARY AND CAP RISH US, OR WHETHER IT IS REASONABLY RELATED, BUT THAT IS YOUR BURDEN TO ESTABLISH. ISN'T THAT SORT OF WHAT YOU ARE ESPOUSING ANYWAY?

IT MAY BE A MIXED BURDEN. IT MAY BE A SHIFTING BURDEN. BUT I THINK IT WOULD BE BETTER THAN WHAT WE HAVE RIGHT NOW, BECAUSE WE DON'T HAVE ANY PREDICTABILITY OR CONSISTENCY. THERE IS NO COMMITTEES TESS. THERE IS NO UNIFORM -- NO CONSISTENCY. THERE IS NO UNIFORM TEST. THERE IS, ALSO, THE QUESTION OF OPPRESSIVE ANDNESS. THE DRASTIC -- OPPRESSIVENESS. THE DRASTIC IMPLICATION UPON MY OWNERS, CERTAINLY THE OWNERS.

WHAT ABOUT THE DECREASE IN THE MARKET VALUE OF THESE UNITS?

THERE WAS CONTRARY EVIDENCE WITH REGARD TO MY OWNERS, WHO OWN MULTIPLE UNITS, AND HAD, AS OPPOSED TO MOST OF THE UNIT OWNERS, WHO HAD A SINGLE UNIT AND THEN WERE RENTING THEM OUT AND SOLD THAT SINGLE UNIT. ONE OWNED SIX AT ONE TIME, OF MY CLIENTS, AND ONE OWNED FOUMPLT OBVIOUSLY THEY WERE RENTING ANNUALLY, AND THEY WEREN'T FURNISHED CONDOMINIUMS. IF THEY WENT TO THIS NEW SCHEME, AS SOMEONE POINTED OUT, THREE MONTHS THEY WOULD HAVE TO BE VACANT. LOGIC TENANTS -- LOGIC TENETS SHOWS THAT THEY WOULD HAVE TO BE RENTED FURNISHED AS TO UNFURNISHED. THERE WOULD BE HIGHER TRANSIENTS, AND THEIR INVESTMENT SCHEME WAS TO HAVE PEOPLE IN THERE LONG-TERM, WHO WERE COMMITTED TO THE RENTAL RELATIONSHIP, WHOM THEY COULD RELY UPON TO MAINTAIN CONTINUOUS RENTAL PRESENCE.

WHAT IS YOUR ANSWER TO THE QUESTION JUSTICE ANSTEAD POSED EARLIER, ABOUT LEASING IT FOR NINE MONTHS AND THEN LETTING THE PEOPLE LIVE THERE THE NEXT THREE MONTHS.

I THOUGHT ABOUT THAT BEFORE, AND I THOUGHT ABOUT IT WHEN THE QUESTION WAS ASKED. I THINK THAT WOULD BE, AS PERMISSIBLE AS THE OWNER COMING IN THERE AND LIVING FOR FREE OR THE OWNER'S FAMILY COMING IN THERE, LIVING IF FOR FREE. AN OWNER'S FRIEND COMING DOWN FROM THE NORTH OR WHEREVER, FOR FREE, AND LIVING THERE FOR FREE. THAT IS NOT A RENTER. IT IS A GUEST, AND THAT IS A GRATUITOUS GUESS. GUEST. I THINK THAT IS A DISTINCTION, AND THE OWNER WOULD NEVER HAVE TO LIVE THERE. IF THERE ARE NO FURTHER QUESTIONS, I AM GETTING DANGEROUSLY CLOSE TO MY TIME. THANK YOU.

THANK YOU. REBUTTAL?

THANK YOU. I THINK OF SIGNIFICANCE HERE IS THE COMMENT MADE BY OPPOSING COUNSEL, AS TO THE REQUEST THAT THE COURT ENTER INTO A ANALYSIS OF THE IMPACT OF THE AMENDMENT THAT IS AN ENDLESS QUAGMIRE, BECAUSE IF EVERY AMENDMENT TO A DECLARATION OF CONDOMINIUM IS GOING TO BE TESTED, AS TO WHETHER OR NOT IT HAS A -- SOME SORT OF GOOD OR BAD IMPACT ON A PARTICULAR UNIT OWNER, THAT MEANS EVERY SINGLE UNIT OWNER AND EVERY SINGLE CONDOMINIUM, CAN CHALLENGE THE VALIDITY OF AN AMENDMENT, AS IT PERTAINS TO THEM, BY MERELY COMPLAINING THAT IT HASN'T -- THAT IT HAS AN ADVERSE IMPACT. BY DEFINITION --

AREN'T YOU, THIS AMENDMENT REQUIRES THAT YOU CAN ONLY RENT OR LEASE FOR NINE MONTHS, UP TO THREE UNITS.

THERE WAS AN AMENDMENT THAT IS NOT ARE A ISSUE IN THIS CASE, WHICH LIMITED THE TOTAL NUMBER OF UNITS THAT ANY PARTICULAR UNIT OWNER COULD OWN, TO THREE UNITS.

OKAY.

THE OTHER POINT I WOULD LIKE TO MAKE IS THAT THE QUESTION WAS POSED EARLIER, AND I THINK IT WAS YOU, JUSTICE QUINCE, THAT WOULD IT BE POSSIBLE FOR, DURING THE NINE-MONTH PERIOD, TO LEASE IT TO ANY NUMBER OF PERSONS AT VERY SMALL INCREMENTS, AND ALTHOUGH TECHNICALLY I WOULD PRESUME THAT WOULD BE OKAY, IN LOOK ING AT THE DECLARATION, THE PROVISION, PROGRAM 10.3, SPECIFICALLY SAYS THAT LEASES MUST BE APPROVED BY THE BOARD OF DIRECTORS. SO THAT, IN THE EVENT THAT BECAME A PROBLEM, THE BOARD OF DIRECTORS, BY USING THE REASONAL AUTHORITY UNDER THE CASE LAW, CAN SET CERTAIN POLICIES, WITH REGARD TO THE FREQUENCY OF THE AMENDMENTS THERE.

ALTHOUGH YOU SAY IT IS NOT AN ISSUE HERE, ABOUT AN AMENDMENT WHICH LIMITS ANY ONE INDIVIDUAL'S OWNERSHIP TO THREE UNITS, YOU DON'T SEE A PROBLEM WITH SOMEONE WHO MAY ALREADY OWN TEN UNITS? DOES THAT PROVISION APPLY TO THEM?

IT WOULD NOT REQUIRE A DIVEST TOUR OF THE OWNERS OF THE UNITS.

BUT IT WOULD REQUIRE THEM NOT TO BE ABLE TO LEASE OUT SEVEN OF THOSE TEN UNITS THAT THEY OWN.

PARDON ME?

BUT IT WOULD REQUIRE THEM TO BE ONLY ABLE TO LEASE THREE OF THE TEN UNITS THAT THEY OWN?

I DON'T KNOW. I DON'T THINK SO. I THINK THEY ARE SEPARATE. I THINK THERE ARE SEPARATE AMENDMENTS. WE HAVE TO BE COGNIZANT, HERE, ABOUT THIS WHOLE ISSUE OF RETRO

ACTIVITY. WE ARE NOT DEALING, HERE, WITH AN ISSUE OF RETRO ACTIVITY. WHAT WE ARE SAYING IS THAT THIS AMENDMENT, AS ALL AMENDMENTS ARE ENCUMBRANCES ON EVERY UNIT. WE ARE ONLY ENFORCING THIS AMENDMENT, LIKE ANY OTHER AMENDMENT, TO A CONDITION WHICH TAKES PLACE AFTER THE DATE OF THE AMENDMENT, SO FOR INSTANCE, IN THIS CASE --

COUNSEL, YOU HAVE USED UP ALL YOUR TIME.

I AM SORRY, YOUR HONOR. THANK VERY MUCH.

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.