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City of Oldsmar v. State of Florida

MR. CHIEF JUSTICE: NEXT CASE ON THE COURT'S DOCKET IS OLDSMAR VERSUS STATE. THANK YOU, COUNSEL. MR. SPOFFORD, YOU MAY PROCEED.

THANK YOU. I AM WITH GLENN, MARS AND HOOKER AND WE ARE HERE TODAY SEEKING A DISMISSAL OF THE COMPLAINT FILED BY THE CITY OF OLDSMAR, PURSUANT TO FLORIDA STATUTE 75, WHICH IS THE BOND VALIDATION STATUTE, THE STATUTE THAT IS USED WHEN PARTIES SEEK TO ADJUDICATE THE VALIDITY OF A PUBLIC DEED INSTRUMENT.

YOU HAVE GOT A RATHER UNUSUAL PROCEEDING HERE, DO YOU KNOW KNOT?

IT IS UNUSUAL, YOUR HONOR. -- DO YOU NOT?

IT IS UNUSUAL, YOUR HONOR. I HAVE LOOKED, AND I HAVE NOT FOUND ANY CASE WHERE ANYONE HAS DONE THIS WAY BEFORE. I HAVE FOUND A NUMBER OF CASES WHERE AN ADJUDICATION OF A PUBLIC DEBT IS PERFORMED, AFTER THE DEBT HAS BEEN INCURRED. YOU KNOW, THE STATE OR THE AND LEASE HAVE ARGUED THAT THIS IS ABSURD. -- OBTHE APPELLEES HAVE ARGUED THAT THIS IS ABSURD. YOU CAN'T DO THIS AFTER THE DEBT HAS BEEN INCURRED, BUT THERE ARE A NUMBER OF CASES THAT I HAVE FOUND, WHERE THE SUPREME COURT HAS RENDERED AN ADJUDICATION REGARDING THE VALIDITY OF THE PUBLIC DEBT, AFTER THE DEBT HAS BEEN INCURRED.

BUT HAVE THOSE BEEN IN CHAPTER 75 PROCEEDINGS?

YES, YOUR HONOR.

ALL OF THEM?

I BELIEVE SO, YOUR HONOR. I KNOW THAT THE FOUR THAT I CAN CITE TO THE COURT ALL WERE UNDER CHAPTER 75.

DO THEY HAVE THE SAME KIND OF PARAMETERS, WITH THE LIABILITY POSSIBILITY UNDER A CONTRACT, SUCH AS THAT YOU HAVE HERE?

I DON'T THINK THERE IS ANY DISTINCTION, YOUR HONOR. THE CASES I AM REFERRING TO ARE THE FIRST ONE WOULD BE SCHOOL BOARD OF SARASOTA COUNTY, WHICH DEALT WITH AGREEMENT, BECAUSE THERE IS A DISTINCTION BETWEEN A LEASE AGREEMENT FOR PROPERTY AND A CONTRACT --

IS THIS FOR THE CLASSROOM BUILDINGS?

YES. YES.

BEFORE YOU GO INTO THE OTHER CASES, LET'S JUST MAKE SURE THAT WE ARE CLEAR ON THE PROCEDURAL POSTURE IN THIS CASE. BEFORE THE CHAPTER 75 PROCEEDING WAS FILED, THERE WAS, AND I ASSUME IS ONGOING IN. THE COUNTY, A LAWSUIT ARISING OUT OF THE JPA. CORRECT?

CORRECT.

AND WITHOUT GOING TO WHAT THE CURRENT STATUS IS, THE, ONE OF THE DEFENSES THAT YOU RAISED IN THAT LAWSUIT WAS THAT YOU DON'T OWE THE MONEY. CORRECT?

THERE WERE --

THAT IT WAS THE D.O.T.'S RESPONSIBILITY FOR THESE COST OVERRUNS, NOT THE CITY'S.

CORRECT. FOR A PORTION OF THE COST OVERRUNS. THERE ARE 15 OR 16 AFFIRMATIVE DEFENSES IN THAT CASE.

AND ONE OF THE AFFIRMATIVE DEFENSES THAT WAS WRAISED WAS THE -- RAISED WAS THE ISSUE OF THE CONSTITUTIONALITY OF THE JPA CORRECT?

CORRECT.

SO YOU ARE NOT SAYING THAT, AS A MATTER OF LAW, THE ONLY PLACE THAT THE CONSTITUTIONALITY OF AN AGREEMENT UNDER THE ARTICLE 12 WOULD BE LITIGATED WOULD BE IN A CHAPTER 75 PROCEEDING, ARE YOU?

YOUR HONOR, I THINK THE DISTINCTION THERE, THIS COURT HAS ALLOWED OR STATED THAT YOU CAN USE A DECLARATORY JUDGMENT ACTION TO DETERMINE THE VALIDITY OF A PUBLIC DEBT OR YOU CAN BRING IT UNDER A CHAPTER 75 PROCEEDING, BUT IF YOU USE A DECLARATORY JUDGMENT PROCEEDING, THE ONLY PARTIES THAT ARE BOUND ARE THE PARTIES NAMED IN THAT SUIT. THE ADVANTAGE, AND WHY THE COURT I BELIEVE, HAS INSTRUCTED PUBLIC MUNICIPALITIES OR PUBLIC ENTITIES TO USE CHAPTER 75, IS BECAUSE CHAPTER 75 IS ESSENTIALLY A QUIET TITLE ACTION IF YOU WILL. IT BINDS EVERYONE T LACE TO REST FOREVER -- IT LAYS TO REST FOREVER, ANYONE THAT MIGHT EVER HAVE A CLAIM THAT THIS DEBT MAY BE INVALID, TO SPEAK NOW OR FOREVER HOLD YOUR PEACE.

BUT THE CASE WHICH WE RECENTLY ADD JUT INDICATED, WHICH -- ADJUDICATED, WHICH CAME OUT OF THE CIRCUIT QUESTION, THAT CAME OUT OF A CHAPTER 75 PROCEEDING.

CORRECT, YOUR HONOR, AND I BELIEVE WHAT HAPPENED WAS A PRIVATE PARTY. I WANT TO SAY THAT THE COMPUTER LEASING COMPANY THAT OWNED THE COMPUTER LEASE, SPEAKING ABOUT THE FRANKENMUTH CASE, IN THAT CASE A PRIVATE PARTY WAS TRYING TO DETERMINE THE VALIDITY OF THE UNDERLYING DEBT INSTRUMENT, THE COMPUTER LEASE AGREEMENT THERE. THEIR ONLY RECOURSE WAS TO BRING A DECK ACTION, BECAUSE CHAPTER -- A DECK ACTION -- A DEBT ACTION, BECAUSE THE CHAPTER 75 SAYS THE ONLY PARTIES THAT CAN BRING AN ACTION ARE GETTING BACK TO THE DEBT INSTRUMENT.

WHEN YOU WERE BROUGHT IN AS A THIRD PARTY DEFENDANT, YOU DIDN'T SEEK IN THAT LAWSUIT, TO SAY WE NEED TO ABATE THIS, BECAUSE I NEED TO GO TO WHEREVER WHATEVER COUNTY, PINELLAS -- YOU ARE IN PINELLAS.

THE FIRST SUIT WAS BROUGHT IN HILLSBOROUGH COUNTY.

I DIDN'T WANT TO AND AID -- ABATE. THAT I NEED TO GO TO PINELLAS, BECAUSE WE HAVE GOT TO BRING A CHAPTER 75 PROCEEDING T WASN'T UNTIL AFTER YOU BROUGHT A MOTION FOR SUMMARY JUDGMENT ON THIS AFFIRMATIVE DEFENSE AND THAT MOTION FOR SUMMARY JUDGMENT WAS DEN I HAD, NOT THAT THERE WAS AN ADJUDICATION, ONE WAY OR. THE, BUT JUST THAT IT WAS NOT A MATTER OF LAW.

CORRECT.

THAT YOU, THEN, BROUGHT THIS CHAPTER 75 PROCEEDING. GIVEN THAT POSTURE, WHY SHOULD,

HOW SHOULD THE COURT TAKE A SITUATION WHERE THAT HAS OCCURRED AND SAY THAT THE ADVANTAGES OF THE CHAPTER 75 PROCEEDING SHOULD BE AVAILABLE TO THE CITY WHO IS, NO DOUBT, YOU ARE TRYING TO AVOID A CONTRACTUAL OBLIGATION THAT YOU CONTRACTED FOR SEVERAL YEARS BEFORE? WHY, WHAT IS THE POLICY, THE PUBLIC POLICY IN ALLOWING CHAPTER, THE ADVANTAGES OF CHAPTER 75 TO BE BROUGHT, WHEN THE CASE IS IN THIS PROCEDURAL POSTURE?

YOUR HONOR, I BELIEVE THAT PUBLIC POLICY DOES FAVOR ALLOWING THE CITY TO DO THIS. ONE, IT IS A MORE EXPEDIENT AND MORE EFFICIENT WAY TO ADJUDICATE THIS VERY ISSUE. CURRENTLY A TWO WEEK TRIAL, THE CITY WILL INCUR THAT EXPENSE, AND WHEN IT IS DONE, THERE IS THE REAL LIKELIHOOD THAT THIS CASE WILL BE BACK ON APPEAL OR MAY END UP BACK IN THESE CHAMBERS ON THE SAME ISSUES. USING A CHAPTER 75 PROCEEDING, AND BEFORE I LEAVE THE HILLSBOROUGH COUNTY PROCEEDINGS, NO MATTER WHAT IS DECIDED THERE, IF THE CITY IS FOUND LIABLE ON THE JPA IN HILLSBOROUGH COUNTY, IF THE D.O.T. OR WHEN THE D.O.T. SEEKS TO COLLECT, IN PINELLAS COUNTY, ANY TAXPAYER, ANY PROPERTY OWNER WITHIN THE CITY OF OLDSMAR, WOULD HAVE THE RIGHT TO FILE AN OBJECTION AND AN INJUNCTION ACTION, TO PREVENT PAYMENT OF THAT DEBT, AND WE WOULD BE ARGUING THE SAME ISSUES AGAIN.

IF THAT IS THE CASE AND IF WE AGREE THAT YOU COULD BRING AN ACTION UNDER CHAPTER 75, WHY ISN'T THE D.O.T. A PARTICULAR PARTY IN THAT ACTION, AND WHY ARE YOU FIGHTING THEIR MOTION TO INTERVENE? YOU SAID THEY WOULD HAVE TO BE BOUND BY THESE PROCEEDINGS, SO WHY AREN'T THEY A NECESSARY PARTY? AREN'T THEY A PARTY TO THE JPA AGREEMENT?

ABSOLUTELY, YOUR HONOR. THE CASES INTERPRETING CHAPTER 75, ARE CLEAR. THEY STATE THAT THE BOND HOLDER, THE PERSON HOLDING THE DEBT, IS NOT AN INDISPENSIBLE AND NECESSARY PARTY TO THE DETERMINATION OF THE VALIDITY OF THAT INSTRUMENT. THE STATUTE SAYS THAT THE PEOPLE THAT ARE, OR THE PARTIES THAT HAVE TO BE NAMED THAT ARE NECESSARY PARTIES, ARE THE STATE OF FLORIDA, THE STATE ATTORNEYS OFFICE, WHO IS TO PROVIDE REPRESENTATION TO THE TAXPAYERS AND PROPERTY OWNERS, AND THE CASES ARE REAL CLEAR THAT THE BOND HOLDER ARE NOT INDISPENSIBLE PARTIES, AND SO WHAT WE WERE ATTEMPTING TO DO WAS THE STATUTE SAYS THAT THEY ARE NOT AN INDISPENSIBLE PARTY. THE STATUTE SAYS THAT YOU PROVIDE NOTICE TO ANYONE BY PUBLICATION, INCLUDING THE STATE ATTORNEY OFFICE OBVIOUSLY GETS SERVICE OF IT.

SO THESE PEOPLE WHO WERE A PARTY TO THE AGREEMENT, AND YOU ARE TRYING TO VOID THIS AGREEMENT, HAVE NO SAY BEFORE THE COURT, BEFORE THE AGREEMENT IS VOIDED.

I THINK THERE IS A DISTINCTION THERE, YOUR HONOR. THEY ARE NOT A NECESSARY OR INDISPENSIBLE PARTY TO A CHAPTER 75 VALIDATION PROCEEDING. THEY MAY HAVE A SAY, IF THEY ARE GOING TO BE AFFECTED. THEN THEY CAN PETITION THE COURT AND SAY WE WOULD LIKE TO HAVE OUR SAY, AND THAT IS WHAT HAPPENED IN THIS CASE, WITH THE PINELLAS COUNTY, THE TRIAL COURT SAID, UPON THE D.O.T.'S REQUEST, YOU YES, YOU MAY ENTER -- YES, YOU MAY INTERVENE. MY OBJECTION WAS ESSENTIALLY AT THAT POINT THE D.O.T. LAWYERS USURPED THE STATE ATTORNEYS' ROLE IN THE PROCEEDING. MY INTERPRETATION OF THE STATUTES IN THE CASE LAW IS THAT, IN A CHAPTER 75 PROCEEDING THE STATE ATTORNEY'S OFFICE IS CHARGED WITH THE RESPONSIBILITY FOR INTERPRETING THE DEBT INSTRUMENT, AND MAKING THE DETERMINATION AN INDEPENDENT DETERMINATION, WHETHER THAT INSTRUMENT SATISFIES THE CONSTITUTIONAL REQUIREMENTS OR NOT. WHEN THE D.O.T. STEPS IN AND TAKES --

I GUESS WE GENERALLY SEE THESE AT THE TIME THAT THE CITY OR WHATEVER PUBLIC ENTITY IT IS THAT IS ATTEMPTING TO GET THESE BONDS, AS OPPOSED TO AFTER THE AGREEMENT HAS ALREADY BEEN REACHED AND WHATEVER BONDS HAVE BEEN I SHOULD.

CORRECT, YOUR HONOR.

SO NORMALLY THAT IS WHEN THE STATE ATTORNEY IS THERE TO SAY THAT YOU HAVEN'T COMPLIED WITH WHATEVER THE STATUTORY REQUIREMENTS ARE FOR THE ISSUANCE OF THESE BONDS.

CORRECT. BUT THERE IS NOTHING THAT PREVENTS THE PARTIES OR A PARTY FROM SEEKING ADJUDICATION AFTER THE FACT, AND I WOULD LIKE TO --

THIS ISN'T REALLY --

WHAT WOULD THIS ADJUDICATION BE AFTER THE FACT? ISN'T IT RATHER HOLLOW, IF IT HAS ALREADY BEEN DECIDED THAT THE BOND ISSUE IS INVALID? THAT IS RATHER HOLLOW INTERVENTION, AT THAT POINT, ISN'T IT?

I AM NOT SURE I UNDERSTAND THE QUESTION.

WHAT IS, YOU SAY DOT COULD INTERVENE AT A LATER STAGE. WAS THAT WHAT YOU SAID?

THEY WERE ABLE TO INTERVENE IN THIS STAGE, AT THE TRIAL LEVEL. BUT THE TRUE ISSUE OF WHETHER THE BONDS WERE INVALID OR NOT, THAT IS THE DISPOSITIVE ISSUE.

CORRECT.

THAT WERE ALLOWED TO INTERVENE AT THAT POINT, WHERE THE ISSUE WAS BEING DECIDED?

THEY WERE ALLOWED TO INTERVENE. I THINK I KNOW WHERE YOU ARE GOING WITH YOUR QUESTION. I AM NOT SURE I UNDERSTAND EXACTLY, BUT IN A BOND VALIDATION SUIT, THE STATE ATTORNEYS OFFICE IS CHARGED WITH THE RESPONSIBILITY FOR MAKING A DETERMINATION IS THIS A VALID DEBT OR NOT, TO PROTECT ALL OF THE PARTIES, ALL OF THE TAXPAYERS, ALL OF THE PROPERTY OWNERS WITHIN THE CITY OF OLDSMAR. THAT IS THEIR JOB. AND IF THEY MAKE THE DETERMINATION THAT THE DEBT IS VALID, THEN THAT IS THE POSITION THAT THEY ARE SUPPOSED TO BE AN ADVOCATE OF THAT POSITION, BUT IF THEY MAKE THE DETERMINATION THAT IT IS INVALID, AND I THINK IF YOU LOOK AT THIS JPA, YOU ARRIVE AT THE IN ESCAPEABLE CONCLUSION THAT IT IS A DEBT THAT IS SUBJECT TO ARTICLE VII, SECTION 12 OF THE CONSTITUTION.

BUT IT ONLY IN EFFECT MOOTS THE OTHER ISSUES, DOESN'T IT? ONCE A DETERMINATION IS MADE THAT IT IS AN INVALID BOND ISSUE DOESN'T THAT MOOT ALL OF THE REST OF THE ISSUES?

THE ONLY OTHER ISSUE WHETHER THERE WAS A REFERENDUM. IN ORDER TO MAKE THAT DETERMINATION, YOU HAVE TO LOOK AT THE DEBT INSTRUMENT, AND ONCE YOU LOOK AT IT, YOU COME TO THE CONCLUSION IN ESCAPEBLY THAT IT IS A DEBT SUBJECT TO ARTICLE VII THEN THE NEXT LEVEL OF ANALYSIS IS WAS THERE A REFERENDUM, DID THE TAXPAYERS, WHO WERE GOING TO BE SADDLED WITH THIS DEBT, WERE THEY GIVEN THE OPPORTUNITY FOR A REFERENDUM, ACCORDING TO ARTICLE VII OF THE CONSTITUTION. IF THEY APPROVED THAT REFERENDUM THEN THERE WOULD BE AN ARTICLE 7 DEBT, AND IF THERE WAS NO REFERENDUM, THEN THAT DEBT, I THINK, WOULD AT THAT POINT BE INVALID, ANDING IT THAT IS WHERE IT SHOULD END UP, BACK AT THE TRIAL COURT LEVEL, WITH INSTRUCTIONS THAT TRIAL COURT, YOU DID HAVE JURISDICTION, THE SUPREME COURT DID HAVE JURISDICTION, BECAUSE WHEN YOU LOOK AT THIS INSTRUMENT, IT IS --

WHAT WOULD BE THE SUPREME COURT'S JURISDICTION? OUR JURISDICTION IS EXTREMELY LIMITED IN BOND VALIDATION HEARINGS? AND WE WOULD BE LOOKING FOR --

ABSOLUTELY, YOUR HONOR.

DOESN'T THIS DRAG US INTO SOME OTHER CRITERIA, OTHER THAN THE THREE CRITERIA THAT WE GENERALLY USE TO DETERMINE WHETHER THAT IS --

I DON'T BELIEVE SO, YOUR HONOR. THERE IS THREE CRITERIA THAT THIS COURT, ONLY THREE THAT YOU CAN REALLY LOOK AT IN A BOND VALIDATION PROCEEDING. WAS THE, WAS THERE A PROPER PURPOSE? WAS IT BEING USED FOR PUBLIC PURPOSE? IN THIS CASE, IT IS A PUBLIC WATER WORKS AND SEWER. CLEARLY IT IS. IS THERE A STATUTORY OR IS THERE A LEGAL AUTHORITY FOR THE MUNICIPALITY TO DO THIS, AND THERE IS. MUNICIPALITIES IN FLORIDA CAN DO THIS SORT OF WORK, AND THE THIRD ONE IS WERE THE REQUIREMENTS OF LAW COMPLIED WITH? IN THIS INSTANCE, YOU HAVE TO FIND THAT THERE IS NOT. THERE ISN'T A CHAPTER 180, DEALING WITH THE REFERENDUM AND PUBLICATION AND MOIFINGS REQUIREMENTS, WHICH SON OF THE ISSUES IN OUR COMPLAINT, SO IN FRONT OF YOU --.

IS THAT WHAT YOU ARE ASKING US TO DECIDE HERE TODAY?

I THINK WHAT I AM ASKING YOU IS YOU HAVE TO MAKE AN INDEPENDENT DETERMINATION, DE NOVO REVIEW OF WHETHER OR NOT THIS COURT HAS SUBJECT MATTER JURISDICTION TO DECIDE THIS ISSUE. YOU CAN'T DO THAT, WITHOUT LOOKING AT THE JPA. IF YOU, JURISDICTION IS NORMALLY DETERMINED BY THE WELL-PLED JURISDICTIONAL FACTS, WHICH WE DID THAT IN THE COMPLAINT. WE ATTACHED THE JPA TO THE COMPLAINT. THE ONLY WAY THAT THE TRIAL JUDGE COULD SAY THERE ISN'T A JURISDICTION IS TO CONSTRUE THAT JPA, AND IT IS AN ALTERNATIVE FOR THE COURT --

IS THERE AN ALTERNATIVE FOR THE COURT TO ARGUE THAT A MUNICIPALITY COULD NOT TAKE ADVANTAGE OF THE BENEFITS OF A CHAPTER 75 PROCEEDING, AFTER IT HAS INCURRED A CONTRACTUAL OBLIGATION, WAITS SEVERAL YEARS, UNTIL IT IS SUED, AND THEN USED THIS EXPEDITIOUS PROCEDURAL MECHANISM, IN ORDER TO INVALIDATE, TO INVALIDATE THE OBLIGATION, THAT THAT IS NOT THE PURPOSE OF A CHAPTER 75 PROCEEDING? IT IS NOT FOR THE MUNICIPALITY, AFTER IT HAS INCURRED THE OBLIGATION. ISN'T THAT, REALLY, WHAT WE, IS AN ALTERNATIVE BASIS FOR US TO AFFIRM THE TRIAL COURT'S ORDER?

NO, YOUR HONOR, RESPECTFULLY. I SEE MY REBUTTAL LIGHT IS ON. I WOULD LIKE TO FINISH THIS QUESTION, IF I MAY. ONE, THE CONSTITUTION TRUMPSMENT THE CONSTITUTION SAYS THAT -- KUMPS. THE CONSTITUTION THAT, IN SITUATIONS LIKE THIS, THE TAXPAYERS CANNOT BE SADDLED WITH INVALID DEBT, WITH UNLAWFUL DEBT AND THAT IS WHAT THIS WOULD BE. TWO, WHAT IS THE PURPOSE OF A CHAPTER 75 PROCEEDING? THE PURPOSE IS TO DETERMINE THE VALIDITY, THE ENFORCEIBILITY OF PUBLIC DEBT. WILL THE TAXPAYERS BE SADDLED WITH THIS DEBT OR NOT. THERE IS NOTHING IN THE STATUTE THAT STATES THAT IT CAN ONLY BE DONE IN ADVANCE OR IT CAN ONLY BE DONE AFTER THE FACT. IN FACT, IF YOU LOOK AT THE TEXT OF THE CURRENT STATUTE, 75.02, IT SPEAKS IN TERMS OF BONDS LEVIED OR TAXES LEVIED, USING THE PAST TENSE. IF YOU LOOK AT THE PROCEEDINGS STATUTE, 1911 STATUTE, WHICH IS THE BOND, THE PUBLIC DEBT VALIDATION STATUTE IN EFFECT PREVIOUSLY, IT SPEAKS IN TERMS OF PROSPECTIVE, A PUBLIC ENTITY INTENDING TO DO, AND IT SPEAKS IN CONTEXT OF YOU HAD TO DO A BOND VALIDATION PROCEEDING BEFORE YOU COULD ISSUE THE DEBT. THAT IS NOT WHAT HAS HAPPENED NOW.

WHY WOULD THE CITY EVER DO IT PROPERLY? IF THE CITY CAN ENTER INTO A AGREEMENT AND GET OUT OF IT BY SAYING WE DIDN'T FOLLOW THE PROPER PROCEDURE, EITHER STATUTORILY OR CONSTITUTIONALLY, I MEAN, WHAT WOULD STOP THEM FROM NEXT YEAR ENTERING INTO THE SAME KIND OF AGREEMENT AND THEN COMING BACK AND SAYING OOPS, WE DIDN'T FOLLOW THE PROPER PROCEDURE. WE WANT YOU TO INVALIDATE THIS AGREEMENT WE ENTERED INTO.

TWO RESPONSES TO THAT, YOUR HONOR. FIRST, I DON'T THINK ANY MUNICIPALITY, AND

CERTAINLY THIS MUNICIPALITY DID NOT DO THIS INTENTIONALLY T WASN'T REALIZED, UNTIL AFTER THE FACT, THE SECOND POINT IS, AS IN THE FRANKENMUTH OR ENTITIES BEFORE THIS PUBLIC COURT, THEY HAVE TO DO THAT AT THEIR OWN RISK, DETERMINE WHETHER THIS IS AN INVALID INSTRUMENT OR NOT H IN THIS PARTICULAR CASE, THE D.O.T. HAD THE ABILITY AND HAD THE KNOWLEDGE TO PREVENT THIS PROBLEM.

BUT YOU HAD THE ABILITY TO ASSERT THAT DEFENSE IN THE THIRD PARTY ACTION, AND THAT IS WHAT FRANKENMUTH IS ABOUT IS THAT THERE WAS AN ACTION FILED TO RECOVER ON THE LEASE, AND IT WAS ASSERTED AS A DEFENSE. IT WASN'T ASSERTED HERE IN HILLSBOROUGH COUNTY, CORRECT?

CORRECT.

AND WHY WOULD NOT THE DOCTRINES OF AND EXTENSION OR PREEMPTION APPLY -- OF ABSTENSION OR PREEMPTION APPLY AND SPECIFY THE TYPE THAT JUSTICE PARIENTE AND JUST CONTINUES -- JUSTICE QUINCE IS SUGGESTING, AND THE TYPE NOT AT THE OUTSET AND THE SITUATION THAT HAS ALREADY ARISEN, SUCH AS THE FRANKENMUTH SITUATION.

TWO. YOU DON'T HAVE HILLSBOROUGH COUNTY IN THIS CASE, THE D.O.T., THE CONTRACTOR, KIMMINS CONTRACTING, AND THE CITY OF OLDSMAR. THE PINELLAS COUNTY CASE INVOLVES THE D.O.T., THE CITY, AND THE STATE ATTORNEYS OFFICE, THE TAXPAYERS OF THE CITY OF OLDSMAR. YOU HAVE GOT A HUGE CLASS OF INDIVIDUALS.

BUT FRANKER MUTT IS THE SAME THING. IT DID NOT INVOLVE ALL THOSE OTHER PARTIES. IT WAS THE INSURANCE COMPANY, WHO HAD TAKEN OVER THE FINANCING ON THE LEASE, THE BIG COMPUTER EQUIPMENT, AND IT WAS A DETERMINATION, IN THE FEDERAL COURTS, AS TO WHETHER THAT VIOLATED THE FLORIDA CONSTITUTION, AND THE GOVERNMENTAL ENTITY WAS PERMITTED TO ASSERT THAT DEFENSE, AND IN FACT, AS I RECALL, IT PREVAILED ON THAT DEFENSE, THAT IT WAS ONE OF THOSE.

CORRECT.

BUT IT DID NOT SUGGEST THAT IT HAD TO BE A CHAPTER 75 PROCEEDING, IN WHICH THAT DETERMINATION WAS MADE.

IT IS, THAT DETERMINATION HAS NEVER BEEN MADE, THAT THE ONLY, THAT YOU CAN'T DO A 75 PROCEEDING AFTER THE DEBT HAS BEEN INCURRED F THIS COURT WERE TO RULE, TODAY --

THAT WAS THE REASON FOR THE QUESTION. WHY WOULD NOT THE DOCTRINES OF PREEMPTION OR ABSTENSION APPLY?

MORE SIGNIFICANTLY, YOUR HONOR, IF THE COURT WERE TO RULE TODAY, AND IN THOSE YOU DIDN'T HAVE SIGNIFICANT ISSUES. IF YOU WERE TO DO A CHAPTER 75 PROCEEDING PRIOR TO INCURRING THE DEBT, THEN YOU WOULD BE OVERRULING AT LEAST FOUR CASES WHERE I AM AWARE OF WHERE THIS COURT HAS ALLOWED A 75 PROCEEDING TO TAKE PLACE, AFTER THE DEBT HAS BEEN INCURRED.

IF YOU WENT IN HILLSBOROUGH COUNTY -- IF YOU WIN IN HILLSBOROUGH COUNTY, THEN ARE YOU TELLING US THAT IT WOULDN'T MAKE A DIFFERENCE THAT, THAT RULING WOULD BE A NULLITY?

NO, YOUR HONOR. IF THE CITY PREVAILS IN HILLSBOROUGH COUNTY, THEN THE TAXPAYERS AND THE PROPERTY OWNERS IN THE CITY OF OLDSMAR ARE NOT GOING TO HAVE ANYTHING TO OBJECT ABOUT THAT, BECAUSE THE DEBT IS NOT GOING TO BE IMPOSED UPON THEM. IF THE CITY LOSES AND THE D.O.T. SHOWS UP WITH A BILL AND SAYS NOW YOU WILL PAY US X DOLLARS,

THEN THE TAXPAYERS AT THAT POINT THEY ARE GOING HAVE AN OBJECTION BECAUSE THEY ARE NOT BOUND BY THE HILLSBOROUGH COUNTY PROCEEDING. WHAT WE ARE ATTEMPTING TO DO IS LET'S END THIS. LET'S GET IT TO A HEAD, AS QUICKLY AS POSSIBLE.

YOU ARE NOT GOING TO HAVE ANY REBUTTAL TIME LEFT, I REALIZE, BUT BECAUSE YOU HAVE GONE TO THIS AND WITH THE INDULGENCE OF THE CHIEF, ESPECIALLY SINCE YOU HAVE ALREADY USED YOUR TIME, WITH THESE QUESTIONS AND THE HELP OF THE PANEL. ONE OF MY CONCERNS IS THAT YOU, REALLY, ARE ASKING US TO INTERPRET CHAPTER 75 VERY BROADLY, FOR PURPOSES OF YOU GETTING INTO COURT, IN THIS UNUSUAL POSTURE. BUT THEN IT APPEARS TO ME THAT YOU ARE ATTEMPTING, THEN, TO TRY TO INTERPRET CHAPTER 75 VERY NARROWLY, IN TERMS OF OPPOSING DOT'S INTERVENTION AND ASSERTING THAT IT IS ONLY THE AUTHORITY OF THE STATE ATTORNEY. IN OTHER WORDS I AM VERY CONCERNED THAT YOU ARE TRYING TO SHAPE THIS PROCEEDING IN SUCH A WAY THAT, REALLY, DOESN'T ALLOW THE COURT TO HAVE ALL OF THESE VIEWS, IN THE CHAPTER 75 PROCEEDING, WHEREAS THE COURT WOULD HAVE ALL THESE VIEWS, IN THE OTHER PROCEEDING THAT IS PENDING.

I WOULD RESPECTFULLY DISAGREE. WAE I AM ASKING THE COURT TO DO IS TO INTERPRET OR APPLY CHAPTER 75 CONSISTENTLY WITH WHAT THE STATUTE SAYS AND WITH WHAT THIS COURT HAS DONE IN THE PAST. THE STATUTE SAYS THAT THE PARTY TO BE NAMED IS THE STATE AND THE TAXPAYERS AND THE PROPERTY OWNERS. THAT IS ALL IT SAYS. IT DOESN'T SAY YOU HAVE TO NAME ANYONE ELSE. THEY CAN COME IN, AS THE TRIAL COURT HAS BROAD DISCRETION TO ALLOW PARTIES TO INTERVENE, AND THEY DID THAT. SO INTERPRET IT CONSISTENTLY WITH THE WAY THE STATUTE IS WRITTEN. IF THIS IS WHAT THE LEGISLATURE SAID THIS IS HOW YOU DO IT, THEN THAT IS WHAT WE DID, THEN I THINK WE DID IT PROPERLY. SECONDLY, INTERPRET THE STATUTE CONSISTENT WITH PAST CASES. THE GRW CASE, WHICH YOU CITED IN OUR BRIEF, THE SCHOOL BOARD OF SARASOTA COUNTY CASE. THE INTERAMERICAN CENTER CASE, AND THE DAYTONA BEACH, CITY OF DAYTONA BEACH CASE. THOSE ARE ALL CHAPTER 75 PROCEEDINGS THAT THE COURT ALLOWED TO GO FORWARD, AFTER THE DEBT HAD BEEN INCURRED. AND IF THIS COURT WERE TO RULE, TODAY --

THANK YOU, MR. SWOFFORD.

THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS MARY ANN TRUSSELL, AND I REPRESENT THE DEPARTMENT OF TRANSPORTATION. WITH ME AT COUNSEL TABLE IS MARIE KING. SHE IS FROM THE ASSISTANT STATE ATTORNEYS OFFICE IN CLEARWATER. I DON'T THINK MR. SPOPOD ACCUSES OF ABUSING THE STATE'S AUTHORITY, AND RULE AND DIRECTIONS. I THINK MS. KING'S SUGGESTION WAS THAT I WOULD GO FORWARD AND ANSWER THE COURT'S QUESTIONS AND THAT SHE WOULD JUST LIKE THREE OR FOUR MINUTES OF MY TIME, SO I WILL WATCH THE CLOCK CLOSELY, SO THAT SHE CAN COME UP HERE AND TELL THE COURT WHAT SHE BELIEVES IS IN FULL COMPLIANCE WITH THE DEPARTMENT'S POSITION.

I HAVE TWO QUESTIONS ABOUT THE JUDGE'S ORDER. YOU AGREE THAT THE COLLATERAL ESTOPPEL IS NOT THE PROPER --

IT IS NOT COLLATERAL ESTOPPEL.

YOU SAW IT AS ONE ALTERNATIVE AN ABATEMENT.

THAT COULD HAVE BEEN POSSIBLE. YES.

YOU STILL SAY THAT WOULD BE ONE POSSIBLE SOLUTION IS TO ABATE THIS, UNTIL THE HILLSBOROUGH COUNTY ACTION IS COMPLETED?

IT COULD BE, BUT I DON'T THINK IT IS THE MOST PROPER USE OF, YES, IT COULD HAVE BEEN DONE. THE TRIAL JUDGE COULD HAVE DONE THAT.

THE OTHER ISSUE IS THAT YOUR ARGUMENT, REALLY, IS THAT THIS IS NOT, THAT A PROPER CHAPTER 75. THE JUDGE, THOUGH, ALSO, IN HIS ORDER, ACTUALLY MADE A STATEMENT THAT THE JPA IS NOT A BOND OR A CERTIFICATE OF INDEBTEDNESS. YOU DON'T, THIS, THE JUDGE'S ORDER SHOULD NOT BE AN ADJUDICATION ON THE MERITS, AS TO WHETHER THIS IS OR IS NOT A CERTIFICATE OF INDEBTEDNESS. DO YOU AGREE WITH THAT?

NO. I DON'T, JUSTICE PARIENTE. I BELIEVE THAT THE JUDGE, I REALIZE THAT HE HEARD IT ON A MOTION TO DISMISS, BUT THE WAY THE PROCEEDING WENT, AND THE COURSE THAT IT TOOK, I BELIEVE THAT THAT TRIAL JUDGE HEARD ENOUGH, SAW ENOUGH, HAD ENOUGH RECORDS, AND HAD ENOUGH BEFORE HIM, TO MAKE THAT DETERMINATION THAT IT WAS NOT A BOND.

WAS THAT THE, IS THAT, THOUGH, THAT WHAT YOU ARE ASKING THIS COURT TO DO, IS WE ARE GOING TO, THEN, SHOULD WE TREAT IT AS A CHAPTER 75 PROCEEDING AND GET TO THE MERITS AND THE LIMITED REVIEW THAT JUSTICE SHAW SAID, OR SHOULD WE MAKE A DETERMINATION THAT THIS IS NOT A PROPER CHAPTER 75 PROCEEDING, BECAUSE OF THE, BECAUSE OF THE POSTURE IN WHICH THIS CASE FOUND ITSELF?

WELL, IF I HAD MY CHOICE.

YES.

OF COURSE I WOULD. I WOULD SAY THAT THIS COURT WOULD SAY THIS IS A ROUNDABOUT WAY TO ATTACK A VALID INTERLOCAL GOVERNMENT AGREEMENT, WHICH IS MANDATED BY STATUTE, 337.401 SAYS UTILITIES, THE OWNERS OF THESE UTILITIES, IF THEY ARE IN THE DEPARTMENT'S RIGHT-OF-WAY AND THE DEPARTMENT COMES THROUGH AND WANTS TO WIDEN THE ROAD AND KNEW YOURUMENTS ARE GOING TO BE UNDER US 19 OR UNDER THE INTERSTATE, YOU HAVE THE OBLIGATION, YOU, LOCALITY, YOU, OWNER OF UTILITY, OLDSMAR, MUST MOVE IT, AT YOUR EXPENSE.

YOU WOULD LIKE US TO DO THAT.

RIGHT.

BUT THE TRUTH OF THE MATTER IS, IN HILLSBOROUGH COUNTY, WHEN THE CITY RAISED THAT AFFIRMATIVE DEFENSE, THE D.O.T. DIDN'T MOVE FOR ACROSS MOTION. THAT ISSUE, AS FAR AS THE LEGALITY OF THIS AGREEMENT, IS STILL BEING LITIGATED.

IN THE HILLSBOROUGH CASE. ABSOLUTELY.

SO IT WOULD BE INAPPROPRIATE FOR US TO PREEMPT THAT AND MAKE A PREEMPTED DETERMINATION ON, THIS PARTICULAR RECORD.

YES. I WOULD AGREE. I WOULD LIKE IT TO BE DETERMINED IN THE PINELLAS COUNTY CASE, BUT IN ALL CANDOR, TOO, I BELIEVE THAT IT IS STILL PENDING IN THE HILLSBOROUGH CASE. I BELIEVE THE JUDGE HAS IT BEFORE IT. SUPPOSEDLY, MR. SPOFFORD WILL NOW INTRODUCE THE WITNESSES THAT HE SAID HE HAD IN PINELLAS COUNTY BUT NEVER TENDERED THEM. HE COULD HAVE HAD AN EVIDENTIARY HEARING ON IT. HE COULD HAVE OFFERED TESTIMONY. HE DIDN'T. BUT WAS MORE THAN WILLING TO ALLOW CERTIFIED COPIES OF ALL OF THE PLEADINGS IN THE HILLSBOROUGH COUNTY CASE, AT LEAST THE RELEVANT ONES THAT SHOWED THE JPA AND WHAT IT WAS AND WHAT IT OBLIGATED THE CITY TO DO, INTO THAT, SO THE COURT DID HAVE ENOUGH BEFORE IT, BUT IN ORDER TO GIVE EVERYBODY THE BEST FAIR CHANCE, I BELIEVE THAT THIS COURT WOULD PROBABLY WANT TO TAKE THE POSITION THAT THIS JUST IS NOT A CHAPTER

75. THIS WAS A WAY TO TRUMP THE HILLSBOROUGH COUNTY CASE AND THE D.O.T., BECAUSE EVEN THOUGH MR. SPOFFORD IS THE SAME ATTORNEY IN BOTH CASES, HE NEVER LET THE D.O.T. KNOW THAT HE FILED THIS CHAPTER 75 PROCEEDING. HE HAD IT PUBLISHED, ABOUT A MONTH AND-A-HALF AFTER THE COURT HILLSBOROUGH COUNTY COURT DENIED HIS MOTION FOR RECONSIDERATION ON THIS ISSUE IN THE HILLSBOROUGH CASE, AND ABOUT THREE DAYS BEFORE IT COMES TO HEARING, WE GET A PHONE CALL TO LET US KNOW THAT THIS IS GOING ON, SO WE PUT TOGETHER A MOTION AND FLY LAWYERS DOWN THERE AND THEY ARGUE IT, AND MS. KING SAID AT THAT HEARING, THIS IS A D.O.T. PROBLEM THIS. IS A BRIEF OF CONTRACT CASE -- A BREACH OF CONTRACT CASE, AND IT IS. THIS IS A BREACH OF CONTRACT CASE THAT THE CITY, NOW, HAS TAKEN THE POSITION THAT IT DOESN'T WANT TO BE OBLIGATED NOT JUST FOR THESE COST OVERRUNS, BUT IT HAS ALLEGED, IN ITS COUNTERCLAIM THAT, IT SHOULDN'T BE OBLIGATED AT ALL, SO ALL OF THE MONEY THAT IT PAID, IT DREW UP THE PLANS, IT DREW UP THE SPECIFICATIONS, IT DERMSD HOW MUCH MONEY IT WOULD COST, AND IT PAID. NOW, THERE IS A BRIEF MISREPRESENTATION IN THE CITY'S SUPPLEMENTAL BRIEF, AND I THINK IT WAS INADVERTENT THAT, IT SAYS THAT THE D.O.T. AGREED TO ADVANCE THE FUNDS ON THE CITY'S BEHALF. THERE IS NO SUPPORT FOR THAT STATEMENT F YOU LOOK AT TAB, IN THE APPENDIX, TAB 3-C, THE JPA AND THE MEMORANDUM OF AGREEMENT ARE ALL VERY CLEAR. THE CITY DEPOSITED ALMOST \$1.1 DOLLARS BEFORE THIS EVER TOOK PLACE. THAT WAS THEIR ESTIMATE. THAT IS HOW MUCH THIS WAS GOING TO COST, AND IF THEY WERE RIGHT AND THEY DREW UP ALL THEIR PLANS AND SPECS RIGHT, THE WORK WOULD BE DONE. EVERYBODY WOULD WALK AWAY HAPPY.

IS THIS JPA THE NORMAL WAY THAT THESE AGREEMENTS BETWEEN THE DEPARTMENT AND CITIES OR OTHER GOVERNMENTAL ENTITIES ARE HANDLED, WITH THESE UTILITIES?

ABSOLUTELY. ABSOLUTELY.

AND ARE THEY, NORMALLY, ARE, IS THERE ANY KIND OF BOND REFERENDUM PRIOR TO ENTERING --

THIS IS THE FIRST TIME.

I WOULD ASSUME MOST OF THEM ARE OVER A MILLION DOLLARS.

CORRECTLY, AND THIS IS THE FIRST TIME WE HAVE SEEN THIS ARGUMENT RAISED. EITHER THE CITY DOES IT ON THEIR OWN, BECAUSE THEY HAVE GOT THE FUNDS AND THEY ARE GOING TO DO THEIR OWN FORCES, BUT USUALLY IT IS MORE ECONOMICAL, RATHER THAN HAVE THE CITY CONTRACT WITH SOMEBODY TO DIG UP THE RIGHT-OF-WAY AND MOVE THE UTILITIES OVER, AND THE D.O.T. COME BY AND HAVE THE ROAD WIDENED, THE CITY JUST PAYS FOR ITS PART OF IT, LIKE THE STATUTE SAYS THAT IT HAS TO DO, PAYS THE D.O.T. TO HAVE IT INCLUDED IN AND HAVE ONLY ONE CONTRACTOR OUT THERE WITH ITS SUBS, TO DO ALL OF THE WORK. MOVE THE UTILITIES OVER, WIDEN THE ROADWAY AND FINISH IT UP, AND THAT WAY IT GETS DONE ON TIME, BECAUSE A LOT OF TIMES THE CITIES WILL SAY WE DOLL IT ON OUR OWN, AND THEN THEY DELAY AND DELAY AND ALL OF A SUDDEN THE PROJECTS NEEDS TO BE GOING AND WE HAVE GOT FEDERAL FUNDS AND WE HAVE GOT TO HAVE PROJECTS GET GOING, BUT THE FIRST THING WE HAVE TO DO IS MOVE THE UTILITIES BECAUSE YOU CAN'T PUT THE PAVEMENT OVER THE OLD UTILITIES IN THE OLD RIGHT-OF-WAY. NOW, WHETHER THIS IS TYPICAL, THE CITY SAID WE DETERMINED IT IS GOING TO BE A MILLION DOLLARS TO MOVER THOSE UTILITIES. WE WILL DEPOSIT IT. NOW, HERE IS OUR MONEY. YOU INCLUDE IT IN YOUR CONTRACTOR NOT. THERE ARE A LOT OF OTHER MECHANISMS TO DO IT, EITHER PAY THE SUBCONTRACTOR OF THE UTILITIES, EITHER PAY IT CORRECTLY ON THE CONTRACTOR -- DIRECTLY TO THE CONTRACTOR, BUT THE REASON THAT THE DO. IT WAS SUED IN HILLSBOROUGH COUNTY AND NOT OLDSMAR DIRECTLY, WE HAVE THE CONTRACTUAL OBLIGATION WITH OUR CONTRACTOR. THERE IS NO CONTRACTUAL OBLIGATION BETWEEN OUR CONTRACTOR, WHO IS GOING TO BOTH MOVE THE UTILITIES AND

BUILD THE HIGHWAY.

LET'S GET TO SOME OF THE PROCEDURAL ISSUES, THOUGH. WHAT ABOUT THE ARGUMENT, THOUGH, THAT THE CHAPTER 75 PROCEEDING IS A WAY THAT THE CITY IS PROTECTED, VIS-A-VIS THE TAXPAYERS, AND THAT NO MATTER WHAT OCCURS IN THE HILLSBOROUGH COUNTY ACTION, THAT, IF THE CITY AND THE D.O.T. COULD BE SUBJECT TO A, THERE IS NO IDENTITY OF PARTIES, TO A TAXPAYER, AND THE CITY OF OLDSMAR SAYING THAT THIS IS AN UNCONSTITUTIONAL DEBT OBLIGATION?

THE CITY IS ALREADY SAYING THAT, ON BEHALF OF THE TAXPAYERS. THIS WAS SORT AFTER FALSE CHAPTER 75 PROCEEDING. NONE OF THE CASES, NOT GRW, NOT SCHOOL BOARD OF SARASOTA, NONE THAT I CAN FIND, I AM NOT SURE WHAT ARE THE OTHER TWO CASES OF FOUR THAT MR. SPOFFORD WAS REFERRING TO, HAS BEEN A GO.DAL ENTITY FILING -- A GOVERNMENTAL ENTITY FILE AGO CHAPTER 75 PROCEEDING TO INVALIDATE ITS OWN CONTRACT, AFTER IT HAS BEEN SIGNED, EXECUTED AND PERFORMED. NOW, YES, THIS COURT HEARS AN IN VALIDATION ARGUMENT ALL OF THE TIME, BUT IT IS EITHER THE STATE ATTORNEYS OFFICE SAYS THEY ARE IN VALID FOR VARIOUS REASON. SOME THIRD PARTY INTERVENE OR COMES IN AND SAYS IT IS INVALID FOR SOME REASON, BUT NOBODY, NOT THE DEPARTMENT OF CORRECTIONS AND GRW, FILES ITS OWN ACTION AND SAYS WHAT WE WANT TO DO IS INVALID. THEN DON'T DO IT. YOU DON'T ASK THE COURT TO DETERMINE WHAT YOU ARE DOING IS INVALID BEFORE YOU DO IT, AND IF YOU HAVE ENTERED INTO IT KNOWINGLY THAT IT IS INVALID, IT IS FALSE. IT IS JUST A FALSE CONCEPT TO NOW CLAIM THAT CHAPTER 75 IS AVAILABLE TO A CITY, TO INVALIDATE ITS OWN CONTRACTUAL AGREEMENTS, FIVE YEARS, THIS IS A '95 CONTRACT, FIVE YEARS --

BUT YOU DO AGREE THAT IT AVAILABLE IN THE ACTION IN HILLSBOROUGH.

ABSOLUTELY.

AND THAT IS HOW THE TAXPAYERS ARE PROTECTED.

ARE PROTECTED.

BUT YOU DON'T DO IT IN A CHAPTER 75 AND TURN IT AROUND.

ABSOLUTELY. IF, FOR SOME REASON, MR. SPOFFORD THINKS THAT THE TAXPAYERS ARE SOMEHOW NOT ALIGNED WITH THE CITY'S POSITION THE STATE ATTORNEY'S OFFICE, MS. KING OR SOMEBODY, COULD ALWAYS ASK TO COME IN AND SAY, WAIT A MINUTE. I DON'T THINK THE STAY IS OFFERING THE PROPER -- THE CITY IS OFFERING THE PROPER ARGUMENTS HERE AS TAXPAYERS, BECAUSE NOW MS. KING KNOWS ABOUT IT, BUT MR. SPOFFORD IS DOING JUST WHAT THE TAXPAYERS WOULD BE EXPECTED TO DO. HE IS TRYING TO INVALIDATE HIS OWN AGREEMENTS. THAT IS WHAT WE WOULD EXPECT A TAXPAYER TO DO, UNDER A CHAPTER 75 PROCEEDING, SAY WAIT A MINUTE. I DON'T WANT THIS BOND ISSUE ISSUED, WHICH THIS ISN'T. THERE IS NO DEBT OBLIGATION HERE. BACK IN 1936 OR SOMETHING, WHEN THIS COURT HEARD THAT LEON COUNTY CASE TO BUILD A NEW JAIL OR SOMETHING, THE COURT SAID, YOU KNOW, THIS WAS NEVER SET UP TO PREVENT A GOVERNMENTAL ENTITY OR SOMETHING FROM OBLIGATING ITSELF UNDER CONTRACT FOR CURRENT EXPENDITURES. NOW, IF YOU HAVE GOT A CONTRACTUAL OBLIGATION THAT GOES OUT FOR MANY YEARS, IT HAS A FUNDING SOURCE THAT IS GOING TO HAVE TO BE PAID BACK FOR A NUMBER OF YEARS, EVEN THOUGH YOU DON'T CALL IT A BOND. A DEBT OBLIGATION IS GOING TO BE OUT THERE FOR A NUMBER OF YEARS. THIS WAS PREPAID. ONLY WAY THE CITY WILL BE RESPONSIBLE FOR MONEY IS THEY PLANNED WRONG. THE JPA SAYS YOU DRAW THE PLANS AND THE SPECS. IF THEY DID IT WRONG, JUST LIKE ANY OTHER CONTRACT, THEY WERE GOING TO HAVE TO STAND UP AND SAY I MAY BE RESPONSIBLE FOR SOME ADDITIONAL COSTS THAT MAY HAVE BEEN INCURRED, BUT THEY WILL HAVE THE ABILITY TO DEFEND THAT, AND THAT IS ALL THIS IS, IS A SIMPLE BREACH OF CONTRACT CASE, AND I BELIEVE THAT CHAPTER 75 WAS NEVER CREATED TO DO THIS, TO TRY TO --

IF THEY ARE SUCCESSFUL IN SAYING IT WAS REALLY YOUR FAULT NOT THEIR FAULT, IS THERE ANYWAY THAT THEY WON'T HAVE TO PAY ANYTHING?

ANYTHING ADDITIONAL. LET'S SAY IT IN HILLSBOROUGH COUNTY, THEY GET UP AND SAY, NOW WAIT A MINUTE. THESE COST OVERRUNS WEREN'T OUR FAULT. DOT, IT WAS YOUR FAULT. YOU TOLD THEM THERE WAS SAND THERE AND THEY FOUND WROCKS, SO IT TOOK -- ROCKS, SO IT TOOK EXTRA 25 DAYS TO DO THIS. THEN WE MIGHT HAVE TO PAY, AS A RESULT OF THAT, THE ADDITIONAL MONIES.

BUT THEY ARE ALSO TRYING TO GET THE MONEY BACK THAT THEY PAID OUT DOWN THE LINES?

ABSOLUTELY. AND IT IS A VALID DEFENSE TO SAY DOT, YOU ARE THE ONE THAT HAS TO PAY THOSE EXTRA MONIES NOT US. IT HAPPENS IN EVERY BREACH OF CONTRACT CASE, BUT THEY ARE ALSO TRYING TO SAY NOT ONLY THAT, WE WANT OUR MONEY BACK TDOT. WE PAID YOU. -- DOT. THE CONTRACTOR HAS THAT, SO NOW YOU HAVE TO TRY TO FIND THAT \$1.1 MILLION AND GIVE IT BACK TO US, BECAUSE WE SHOULD HAVE NEVER GIVEN IT BACK TO YOU, BECAUSE WE NEVER SHOULD HAVE GIVEN IT TO YOU IN THE FIRST PLACE, BECAUSE WE DIDN'T GO OUT AND HAVE A BOND REFERENDUM WHEN THE MONEY WENT OUT.

AND THAT IS SET FOR TRIAL?

YES. I BELIEVE IT SET FOR TRIAL IN AUGUST.

SO THE D.O.T. DID NOT SET ACROSS MOTION FOR SUMRARY JUDGMENT, MAKING THE ARGUMENT THAT YOU ARE MAKING HERE TODAY?

I DO NOT BELIEVE THAT THEY HAVE RAISED THAT DEFENSE. I AM NOT TRIAL COUNSEL. THEY DEFENDED ON THE SAME POSITION ON THE MOTION FOR SUMRARY MOMENT JUDGMENT, ON -- SUMRARY JUDGMENT, ON THE MOTION THAT I AM MAKING HERE. THEY SAID IT IS NOT A CONTRACT PROCEEDING. IT IS A BREACH OF CONTRACT CASE. YOU CAN'T INVALIDATE AN AGREEMENT THAT WAS PAID UP-FRONT UP-FRONT. IT DOESN'T HAVE IN DISHTIVE DEBT. THERE IS NO REPAYMENT SCHEDULE. THERE IS NO BOND ISSUE. THERE IS NO PAYMENT SCHEDULE. THERE IS NOTHING IN THERE.

IN WRITING AN OPINION IN THIS CASE, WHAT YOUR VIEW BE THAT THIS COURT SHOULD SAY THAT ITS PARAMETERS OF JURIES DIRTION ARE UNDER ARTICLE -- JURISDICTION ARE, UNDER ARTICLE V SECTION 3-B-2?

I WOULD GO BACK TO THIS COURT'S MOST RECENT CASE AND ALL OF THE OTHERS THAT LAY OUT WHAT THE CRITERIA ARE, AND IS DID AGREE WITH MR. SPOFFORD THAT THIS DOESN'T AGREE WITH THE CRITERIA. THERE IS NO BOND ISSUE. THERE IS NO DEBT. YOU CAN'T PUT ON LINED BLINDERS AND SAY I AM NOT GOING TO LOOK AT THE JPA, TO DETERMINE WHETHER IT IS A BOND AND WHETHER IT MEETS THOSE CRITERIA, BUT I WOULD SAY THAT, WHEN THAT LOOK HAS BEEN GIVEN, AND YOU HAVE DETERMINED THAT THERE IS NO INDICIA OF DEBT, IT DOESN'T MEET ANY OF THESE CRITERIA, THAT YOU CAN'T GET THIS FAST TRACK DIRECTLY FROM A CIRCUIT COURT TO THIS COURT, TO REVIEW THAT, AND THE CIRCUIT COURT CASE HAS TO, THE CIRCUIT COURT'S ORDER HAS TO STAY. NOW, IF I GET TO WRITE IT, OF COURSE, I AM GOING TO, ALSO, SAY THAT THE DETERMINATION THAT IT IS NOT A BOND SHOULD STAND. I AM -- I DON'T BELIEVE, BASED ON WHAT I HAVE HEARD FROM THE COURT, THAT YOU WANT TO GO QUITE THAT FAR, BUT I DO BELIEVE THT --

IT SEEMS TO ME TAT YOU HAVE KIND OF A HARD TIME, EITHER THE JURISDICTION IS SOMETHING YOU EITHER GOT OR YOU DON'T, AND ONCE YOU DON'T HAVE IT, THEN MAKING PRONOUNCEMENTS, THAT IS NOT A CONCEPT THAT THIS COURT HAS THE POWER TO DO.

IF YOU SAY THIS COURT IS WITHOUT JURISDICTION, THEN THE LOWER COURT'S ORDER STANDS.

THE ONLY WAY WE WOULD BE WITHOUT THAT JURISDICTION IS IF IT IS NOT A PROPER CHAPTER 75 PROCEEDING.

THAT'S CORRECT.

BECAUSE IT IS ANTICIPATED, AND I GUESS BECAUSE MOST OF THE TIME, AS YOU SAY, MUNICIPALITIES WANT TO FIND OUT IN A HURRY THAT THEIR OBLIGATION IS GOING TO BE VALID, THE PEOPLE THAT ARE FINANCING WANT THAT, AND SO THERE IS A FAST TRACK. I MEAN, THE, AND THAT THERE FOR JUST VERY NATURE OF THE WAY IT COMES UP SAYS THAT A CASE LIKE THIS SHOULDN'T BE FAST-TRACKED AND GIVEN MANDATORY JUST DIRTION IN THIS COURT -- JURISDICTION IN THIS COURT, BUT REALLY IT IS INTERTWINED, FAN IT IS A VALID CHAPTER 75 PROCEEDING, THEN WE DO HAVE JURISDICTION?

I THINK THE COURT WOULD HAVE TO SAY IF THIS IS A VALID CHAPTER 75 PROCEEDING, THEN YOU HAVE TO MAKE THAT DETERMINATION.

BECAUSE, FOR EXAMPLE, WHAT IF IT IS NOT JUST, I MEAN, WE HAVE ONLY REVIEWED DETERMINATIONS ON THE MERITS, AS TO WHETHER A BOND IS OR IS NOT VALID, BUT IF, FOR EXAMPLE, THERE HAD BEEN A DISMISSAL OF A VALID CHAPTER 75 PROCEEDING ON SOME OTHER GROUND THE DISMISSAL, WE COULD GO BACK, UNDER JURISDICTION.

I DON'T THINK YOU HAVE TO SAY YOU WOULD GO BACK, BECAUSE IF FACT IF THIS REALLY WERE A COMPLETELY DIFFERENT CASE AND IF THIS REALLY WERE AN INDICIA OF DEBT, IF THIS REALLY WERE AN ONGOING OBLIGATION OF TAXPAYERS TO PAY, WHICH IT IS NOT, YOU WOULD HAVE TO LOOK AND MAKE THAT DETERMINATION, AND PERHAPS THE CIRCUIT COURT JUDGE WAS INCORRECT THAT IT WASN'T, SO I THINK YOU HAVE TO LOOK AT IT, BUT WHEN YOU LOOK AT IT AND SAY THIS IS NOT WHAT CHAPTER 75 WAS INTENDED TO DO. THIS IS SUPPOSED TO BE 7508 AND THE RULE OF APPELLATE PROCEDURE ALL SAY THE AUTHORITY TO INCUR, IT ALL IN THE PROSPECTIVE. EVERYBODY WANTS TO KNOW AHEAD OF TIME, WHETHER THEY ARE DOING SOMETHING RIGHT. NOBODY WANTS TO ARGUE ON THEIR OWN BEHALF THAT WHAT THEY DID WAS WRONG, FIVE YEARS AFTER THE FACT THEY DID IT WRONG, UNLESS, LIKE THE TRIAL JUDGE SAYS, YOU MEAN TO TELL ME YOU ARE JUST TRYING TO GET OUT OF THIS CONTRACTUAL OBLIGATION, AND THEY SAID YES, AND I AM DOWN TO 16 MINUTES, AND I DON'T WANT TO IMPOSE ON MS. KING ANY LONGER. I WANT HER TO GET UP AND HAVE HER SAY. THANK YOU VERY MUCH.

MAY IT PLEASE THE COURT. I AM MARIE KING, REPRESENTING BERNIE McCABE, STATE ATTORNEY FOR PINELLAS COUNTY, AND THIS MAY BE THE FIRST CASE THAT YOU WANT TO WRITE A PCA ON A BOND VALIDATION, BECAUSE JURISDICTION IS THE MERITS OF THIS CASE, BECAUSE OF THE TRIAL COURT JUDGE'S ORDER DISMISSING THE BOND VALIDATION. IT PROBABLY IS A CASE OF FIRST IMPRESSION. BOTH ABOUT WHETHER OR NOT CHAPTER 75 WILL SUPPORT AN IN VALIDATION BUT, ALSO, AS TO WHAT IS THE JURISDICTION, IF THE TRIAL COURT JUDGE JUST DISMISSES THE COMPLAINT FOR LACK OF JURISDICTION. THIS COURT IS THE COURT THAT HAS TO TELL BOTH THE CITY AND THE TRIAL COURT JUDGE WHETHER OR NOT THE CITY IS WRONG AND THE TRIAL COURT JUDGE IS RIGHT. OBVIOUSLY THE DISTRICT COURT IS NOT IN A POSITION TO BE DETERMINING CHAPTER 75 JURISDICTION. AND THAT WOULD BE THE ONLY OTHER ALTERNATIVE, FOR WHERE IS THE CITY SUPPOSED TO GO, TO RAISE THEIR APPELLATE ISSUES? IT CAN'T BE THE DISTRICT COURTS. THE LEGISLATURE HAS NOT GIVEN THE DISTRICT COURTS ANY CHAPTER 75 AUTHORITY WHATSOEVER. THIS COURT HAS TO DECIDE WHETHER OR NOT THE TRIAL COURT JUDGE PROPERLY FOUND IT WAS NOT A PROPER 75 PROCEEDING. AND I THINK YOU HAVE THE JURISDICTION TO DO THAT. BUT I THINK, SIMILARLY, TO THE TRIAL COURT'S ORDER, THE CITY 45S NOT INVOKED THIS -- HAS NOT INVOKED THIS COURT'S JURISDICTION TO DO MORE THAN, AND I DON'T KNOW THAT YOU WOULD HAVE MORE JURISDICTION, ANYWAY, BECAUSE OF THE POSTURE

OF THE CASE, THAN TO EITHER DECIDE THE TRIAL COURT JUDGE WAS RIGHT OR WRONG. IF THE TRIAL COURT JUDGE WAS WRONG, YOU ARE GOING TO REMAND FOR THE TRIAL COURT TO HAVE THE BOND VALIDATION HEARING THAT DIDN'T HAPPEN, BECAUSE WE WERE ARGUING JURISDICTION, WHICH, NECESSARILY, INVOLVED SOME OF THE MERITS OF THE CASE THAT --

WOULD YOU AGREE THE FIRST SENTENCE OF JUDGE'S ORDER THAT SAYS THE BOND IS NOT A PARTICULAR ARTICLE INDEBTEDNESS, SUBJECT TO ARTICLE XII OF THE FLORIDA CONSTITUTION. IF -- CONSTITUTION. IF THAT WERE AFFIRMED, THAT WOULD SIMPLY BE AFFIRMING THE CITY'S POSITION WITH THE HILLSBOROUGH CASE, AND THAT WOULDN'T BE APPROPRIATE, EITHER, AT THAT POINT, WOULD IT?

I DON'T THINK THAT PRECLUDES THE CITY, BECAUSE THAT WASN'T PROPER.

IF YOU SAY IT IS A CHAPTER 75 PROCEEDING, PROPER, WE WOULD REMAND IT FOR PROCEEDINGS. WE CAN'T ON THIS RECORD DETERMINE OR SHOULD NOT DETERMINE THAT IT IS NOT SUBJECT TO ARTICLE VII, SECTION 12.

RIGHT. I DO NOT FEEL THAT THAT ISSUE HAS BEEN RESOLVED, AND I THINK THE CHAPTER 75 HAS TO COME FIRST NOT ARTICLE VII SECTION 12. THERE ARE MANY BOND VALIDATIONS ISSUES THAT DON'T DEAL WITH SECTION 12. THE FIRST IS WHETHER IT IS A CHAPTER 75 PROCEEDING. I THINK IT IS THE CITY'S PROBLEM THAT THIS COURT'S RULING THAT THE TRIAL COURT JUDGE MADE THE CORRECT RULING, HOW THEY ARE GOING TO HANDLE THAT IN HILLSBOROUGH. THAT IS THEIR PROBLEM, AND I DON'T KNOW THAT, BECAUSE OF THEIR BEING TOTALITY OF THESE CIRCUMSTANCES, IF THEY CAN FIND WAYS OF ARGUING THAT THAT IS NOT THE RULE EVERYTHING THIS COURT, THAT ARTICLE VII, SECTION 12 WAS OR WASN'T VIOLATED. I DON'T THINK THAT IS GOING TO BE A PROBLEM THAT WE HAVE TO DEAL WITH HERE, BUT CLEARLY ON THE TOTALITY OF THE CIRCUMSTANCES, ABATEMENT IS NOT THE CORRECT ISSUE, EITHER, I DON'T THINK. IF THIS IS ABATED, I AM GOING TO COME BACK WITH THE EXACTLY SAME ARGUMENT THAT, THIS IS NOT A PROPER CHAPTER 75 PROCEEDING, NO MATTER WHEN THEY BRING IT, THAT THEIR CHANCE TO HAVE BROUGHT IT WAS BACK WHEN THEY DECIDED WHETHER OR NOT THEY WERE GOING TO HAVE A BOND ISSUE WITH THE CONTRACT. ALL OF THE CASES EXCEPT --

MS. KING, YOUR TIME IS UP. THANK YOU VERY MUCH. THANK YOU, COUNSEL. THE COURT APPRECIATES YOUR ASSISTANCE IN THIS CASE, AND THE COURT WILL BE IN RECESS FOR 15 MINUTES.