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Ferrell v. State of Florida

DAUGHTER PROVIDES THAT IF IN FACT THERE IS A TAKING OF PROPERTY BY CONDEMNATION, IT CANNOT BE CONSIDERED A SALE FOR PURPOSES OF A COMMISSION, EVEN IF, EVEN IF THE BROKER MIGHT BE CONSIDERED THE PROCURING CAUSE OF THE CONDEMNATION.

DIDN'T DAUER DECIDE THAT CASE BASED ON VERY SPECIFIC FACTS IN THAT CASE. AND DIDN'T THEY MENTION AS PART OF THE FACTS IN THAT CASE, THERE WAS NO DISCUSSION OF THE POSSIBILITY OF CONDEMNATION DURING THE TELEPHONE CALL IN WHICH THE BROKER OBTAINED HIS CONTRACT FROM THE SELLER?

YOUR HONOR, NOTWITHSTANDING THE FACTS IN REFERENCED IN DAUER, DAUER SETS OUT A BRIGHT LINE TEST THAT CONDEMNATION AS A MATTER OF LAW CAN NEVER BE CONSIDERED SALE FOR PURPOSES OF A BROKE ERNL COMMISSION.

HOW BRIGHT IS THE LINE? THAT IS, LET'S TALK ABOUT OTHER POTENTIAL EXAMPLES OF TRANSACTIONS.

CERTAINLY.

I'D SAY THAT YOUR COMPANY HAD A -- OWNS A LOT OF LAND. YOUR COMPANY DOES OWN A LOT OF LAND. BUT LET'S SAY THAT YOU HAVE GOT AN AGGRESSIVE REAL ESTATE BROKER IN A WIDESPREAD BUSINESS ACROSS THE STATE OF FLORIDA. AND HE KEEPS WELL INFORMED AND HE FINDS OUT THAT THE STATE IS JUST APPROPRIATED A HUGE AMOUNT OF MONEY TO PRESERVE LAND IN ITS NATURAL STATE. AND THAT THERE IS A VERY AGGRESSIVE ATTITUDE ON THE BOARD OR THE COMMISSION THAT IS CHARGED TO ACQUIRE THESE LANDS FOR THE STATE. AND HE DETEKTS THAT THIS IS A REAL OPPORTUNITY FOR A PERSON THAT OWNS LARGE AMOUNTS OF LAND. AND HE THEN GOES TO A COMPANY LIKE YOURS THAT OWNS A LOT OF LAND, SAYS I THINK THERE IS A REAL OPPORTUNITY OUT THERE THAT HASN'T BEEN OUT THERE BEFORE, AND FURTHERMORE, WITH MY PROFESSIONAL TEAM, AND ALL OF THE CONTACTS THAT I HAVE AND EVERYTHING, I THINK I CAN CONVINCE THIS BOARD TO PURCHASE THIS PARCEL OF LAND THAT HAPPENS TO BE LOCATED ALONG A CREEK THAT UP TO THIS POINT HAS BEEN THOUGHT TO BE SECOND OR MAYBE TENTH RATE PROPERTY. BECAUSE IT'S SO DEEP IN THE WOODS AND SO INACCESSIBLE OR WHATEVER. AND PRESIDENT OF YOUR COMPANY'S EYES LIGHT UP. SAY BOY, YOU'RE RIGHT, THAT'S LAND THAT WE NEVER THOUGHT WOULD BE DEVELOPABLE, IT'S GOT A LOT OF SWAMP ON IT, A LOT OF MOSQUITOES, ALL THESE KINDS OF THINGSMENT WE NEVER THOUGHT WE'D EVER GET ANYBODY TO BUY THAT, INCLUDING THE STATE. ANYWAY, YOU SEE WHERE I'M GOING? AND LET'S SAY THE CULMINATION OF THAT ENDS UP THAT THE BOARD DOES ACQUIRE THAT LAND, SUBSTANTIALLY PURSUANT TO THE EFFORT OF THAT BROKER THAT ORIGINALLY CAME UP WITH THAT IDEA. AND THAT HAD THIS RELATIONSHIP WITH THE COMPANY THAT OWNED THE LAND. WHAT IMPACT WOULD DAUER HAVE ON A SITUATION LIKE THAT WHERE LATER THE COMPANY SAID OH, I REALIZE THAT YOU WORKED FOR THE LAST TWO YEARS TRYING TO ACCOMPLISH THAT, BUT THERE IS A CASE OUT THERE THAT SAYS SOMETHING SIMILAR ANYWAY THAT WHEN THIS BOARD THEN DOES VOTE TO ACQUIRE THIS LAND, THAT IT'S MUCH LIKE CONDEMNATION AND I DON'T OWE YOU ANYTHING.

DAUER, YOUR HONOR, DAUER WOULD SAY, AND DAUER DOES SAY THAT IF A BROKER DOES NOT HAVE AN EXPRESS CONTRACT TO SAY THAT EVEN IF PROPERTY IS TAKEN IN CONDEMNATION, I WILL GET A COMMISSION, DAUER WOULD SAY IN THE ABSENCE OF AN EXPRESS PROVISION IN THE

BROKERAGE AGREEMENT, THERE IS NOT A COMMISSION FOR A SALE IF THE PROPERTY IS TAKEN IN CONDEMNATION.

WELL IS THIS A MAT OAR-SO IT IS REALLY A MATTER OF CONTRACT LAW.

IT IS A MATTER OF SAYING IF A BROKER WANTS TO HAVE A COMMISSION --.

DO YOU AGREE IT IS A MATTER OF CONTRACT LAW?

ABSOLUTELY.

STATUTE WOULD PROHIBIT A BROKER FROM GETTING -- IT IS NOT AGAINST PUBLIC POLICY.

NO, BUT PUBLIC POLICY IN FACT REQUIRES THAT THE BROKER MAKE IT VERY CLEAR UP FRONT THAT IF THERE IS A CONDEMNATION, HE WILL STILL GET HIS TWO PERCENT COMMISSION OR WHATEVER THAT COMMISSION MAY BE.

DO YOU AGREE, AS MR. McIVER DUE ANY MONEY FOR HIS EFFORTS IN WORKING TO HELP ACCOMPLISH THE CONDEMNATION?

NO, YOUR HONOR.

SO, AGAIN, NOW, IN THE ACTUAL FACTS OF THIS CASE, IT WAS AN ORAL CONTRACT IN DECEMBER OF 1990.

THAT'S CORRECT. ALLEGATION OF AN ORAL CONTRACT FOR A COMMISSION OF A PERCENTAGE OF A SALES PRICE.

AND THEN AT SOME POINT, MR. McIVER REALIZED THAT THE SALES NEGOTIATION WITH TRADITIONAL MEANS WERE NOT BEARING FRUIT, SO HE THEN TALKED TO ST. JOE ABOUT THE OTHER ALTERNATIVES WITH THE STATE, CORRECT?

WELL, THE OTHER ALTERNATIVES WERE ALWAYS THERE. AND IT WASN'T SIMPLY MR. McIVER REALIZING THAT CONTRACT NEGOTIATIONS WERE NOT GOING ANYWHERE.

I REALIZE THERE IS ANOTHER SIDE TO THE STORY. WE ARE JUST TALKING ABOUT WHETHER THE SUMMARY JUDGMENT IN THIS CASE. SO THERE WAS A PERIOD OF TIME UNTIL 1994 THAT MR. McIVER ON BEHALF OF ST. JOE IS WORKING TO ACCOMPLISH OTHER WAYS TO, FOR ST. JOE TO OBTAIN MONEY FOR ITS PROPERTY?

YOUR HONOR, --.

IS THAT CORRECT, THAT'S IN THE LIGHT MOST FAVORABLE TO MR. McIVER?

WELL IN THE LIGHT MOST FAVORABLE TO MR. McIVER, HE MIGHT HAVE BEEN DOING THINGS THAT WAS -- THAT WOULD HAVE BEEN INCONSISTENT WITH HIS EXPRESS CONTRACT.

SO HE WAS JUST A VOLUNTEER, JUST HELPING OUT ST. JOE FROM, FOR ABOUT TWO OR THREE YEARS?

I WOULDN'T EVEN CHARACTERIZE AS A VOLUME TEEFERMENT I WOULD CHARACTERIZE AS DAUER CLEARLY SAYING THAT IF THERE IS A BROKER --.

NET EFFECT. NOT FOR WHAT A CASE FROM THE SECOND DISTRICT SAYS, WE ARE HERE, BECAUSE THERE IS A CONFLICT. BUT FROM THE POINT OF VIEW OF MR. McIVER, HE IS ESSENTIALLY, WHAT ST. JOE'S POSITION IS THAT HE IS A VOLUNTEER?

THE POSITION IS THAT MR. McIVER HAD NO ROLE AND THIS IS UNCONTROVERTED IN THE RECORD. MR. McIVER HAD NO ROLE IN THE CONDEMNATION PROCEEDING ONCE THE CONDEMNATION PROCEEDING BEGAN. IT IS UNCONTROVERTED IN THE RECORD --.

WHAT THE FACT -- YOU TAKE YOUR POSITION AND THEN YOU DON'T HAVE TO LOOK AT ANY OF THE FACTS OF THE CASE TO DETERMINE -- BECAUSE IT WAS A CONDEMNATION ACTION, THERE WAS NO EXPRESSED AGREEMENT ABOUT THIS, THEN DAUER COVERS IT, IS THAT YOUR POSITION?

THAT IS CORRECT, YOUR HONOR.

DOESN'T MATTER THAT IN THIS CASE, TAKING THE EVIDENCE AGAIN IN THE LIGHT MOST FAVORABLE TO MR. McIVER, THAT ST. JOE'S AGREED TO GO THROUGH THIS CONDEMNATION SO THAT THEY COULD GET RID OF THIS PROPERTY. EVEN THAT KIND OF CIRCUMSTANCE DOESN'T MAKE ANY DIFFERENCE.

IT DOESN'T CHANGE IT UNDER DAUER AT ALL.

DAUER YOU AGREE RELIES PRIMARILY ON WILSON, CORRECT?

WELL, DAUER RESTATES WILSON. OF COURSE WHICH IS A 1947 SUPREME COURT CASE.

WHEN IT STATES IT IS WELL SETTLED THAT A CONDEMNATION PROCEEDING DOES NOT CONSTITUTE A SALE, THAT IS THE LANGUAGE YOU'RE RELYING ON?

ABSOLUTELY. PARTIALLY.

SECOND NEXT SENTENCE SAYS THE RECURRING THEME OF ALL OF THESE CASES IS THAT THE PROPERTY OWNER SHOULD NOT BE REQUIRED TO PAY A REAL ESTATE COMMISSION UNDER THE NORMAL BROKERAGE CONTRACT WHEN HIS PROPERTY IS CONDEMNED BECAUSE IN SUCH CIRCUMSTANCES HE'S NOT A WILLING SELLER.

THAT IS CORRECT.

CAN WE AGREE THIS IS NOT THE NORMAL REAL ESTATE BROKERAGE COMMISSION?

WELL, THE RECURRING THEME IS, THE NORMAL BROKERAGE CONTRACT. NOW THE NORMAL -- THE BROKERAGE CONTRACT, WHATEVER IT MIGHT BE, MUST BE UNDER DAUER, AND I THINK IT'S VERY GOOD REASONS FOR THAT TO BE THE LAW OF THE STATE. MUST BE AN EXPRESSED CONTRACT. THE NORMAL CONTRACT FOR A BROKERAGE AGREEMENT WOULD BE I'LL GET TWO PERCENT OF THE SALES PRICE. AND THAT IS IN FACT EXACTLY THE TYPE OF CONTRACT THAT WAS ALLEGED TO EXIST IN THIS CASE.

SPEAK A LITTLE FURTHER ON FURTHER EXTREME. LET'S ASSUME -- I REALIZE THESE ARE NOT THE FACTS HERE. BUT IF WE WOULD ASSUME THAT THE OWNER OF PROPERTY WOULD GO BEHIND THE BROKER AND GO TO A GOVERNMENTAL ENTITY AND SAY OKAY, WE HAVE GOT A METHOD THAT WE CAN AVOID THIS BROKERAGE, LET'S GO THIS ROUTE. AN AGREEMENT WE ARE GOING TO CIRCUIT VENT.

I UNDERSTAND.

WHAT DAUER STILL APPLY? WE ARE JUST GOING TO WALK THROUGH THIS. HAVE A WALK THROUGH, WOULD DAUER STILL APPLY?

DAUER DOESN'T APPLY TO THOSE FACTS. THAT REFERS TO TRADITIONAL SITUATION WHERE THE BROKER MAY BE THE PROCURING CAUSE OF THE SALE. AND YOU MIGHT HAVE SITUATIONS, AND

THERE ARE CASES OF THIS TYPE CITED BY THE RESPONDENT IN ITS BRIEF, DOESN'T REALLY APPLY. THAT WOULD BE A SITUATION WHERE A BROKER TRIES TO PUT A DEAL TOGETHER, BRINGS THE PARTIES TOGETHER, INITIATES CONTINUING NEGOTIATIONS, AT SOME POINT THE PROPERTY OWNER FROM US TRAITS THE SALE BYPASSES THE BROKER, PUTS TOGETHER A SALE, A SALE ACTUALLY OCCURS, THERE IS A CLOSING. NOW THERE ARE CASES --.

I'M TALKING ABOUT AN AGREED UPON CONDEMNATION IS WHAT I AM TALKING ABOUT.

YOUR HONOR, THE WHOLE CONCEPT OF THE AGREED UPON CONDEMNATION I THINK IS, IS NOT REALLY THE CASE.

I AM ASKING YOU THAT SCENARIO. CAN THEY CIRCUMVENT THE BROKER IF THEY HAVE AGREED UPON CONDEMNATION, CAN THEY CIRCUMVENT, UNDER DAUER?

NO, THEY CAN'T. BECAUSE THERE IS NO -- THERE IS NO AGREED UPON CONDEMNATION. DAUER LOOKING AT THE WILSON CRITERIA FROM THE WILSON CASE.

I'M MISSING -- I'M TRYING TO UNDERSTAND. IF AN OWNER OF PROPERTY AND A GOVERNMENT SAY YES WE ARE GOING TO AGREE TO DO THIS AND WE ARE JUST GOING TO USE THE MECHANISM OF THE COURT SYSTEM TO AVOID THIS CONTRACT, THAT IS WHAT I AM ASKING. DOES DAUER PROTECT THE PROPERTY OWNER UNDER THOSE CIRCUMSTANCES?

DAUER DOESN'T ADDRESS THAT ISSUE YOUR HONOR BECAUSE DAUER ADDRESSES A SITUATION WHERE THERE IS A TAKING -- LET ME PUT IT THIS WAY. DAUER WOULD NOT PROVIDE IN THAT SITUATION RELIEF TO THE BROKER BECAUSE, BECAUSE -- BECAUSE A CONDEMNATION ACTION, EVEN IF IT'S ALLEGEDLY PROCURED BY THE BROKER, EVEN THAT, A CONDEMNATION TAKING CAN NEVER BE THE EQUIVALENT OF SALE. THE WILSON CRITERIA DON'T DIFFERENTIATE -- TAKINGS THAT CAN BE CONSIDERED SALES FROM CONDEMNATIONS DHANT BE CONSIDERED SALES. THOSE CRITERIA DISTINGUISH CONDEMNATIONS FROM SALES. CONDEMNATIONS INHERENTLY-CAN'T BE SALES.

IN THIS CASE, WHEN THEY WENT THROUGH -- WHEN THE GOVERNMENT ATTEMPTED CONDEMNATION. YOUR CLIENT VIGOROUSLY OBJECTED AND IN FACT HAD -- WON A DISMISSAL OF THE CONDEMNATION ACTION, ISN'T THAT CORRECT?

WELL A DISMISSAL HAD BEEN ENTERED --.

I KNOW IT WAS ON REHEARING. BUT A DISMISSAL HAD BEEN ENTERED, CORRECT?

AS WELL AS A MOTION FOR REHEARING.

ALL RIGHT. AND IT WAS AFTER THEY HAD WON THIS DISMISSAL THAT THEY ACTUALLY NEGOTIATED WAB ENDED UP BEING THE SALE PRICE OF THIS PROPERTY. UNDER THOSE CIRCUMSTANCES, DOESN'T THAT -- ISN'T THAT THE EQUIVALENT OF A SALE?

NO, NOT AT ALL. THE PROPERTY TRANSFER OBVIOUSLY VIA TAKING ORDER IN COON DEM NATION CASE. THIS IS --.

BY AGREEMENT.

THIS IS PART OF THE WHOLE PROBLEM IF DAUER DOESN'T APPLY IN THIS STATE. IF IN FACT TO SETTLE A CONDEMNATION CASE -- BY THE WAY, CONDEMNATION CASES SETTLE AT VARIOUS POINTS. DURING THE HEARING. DURING A TRIAL PHASE, DURING VALUATION PHASE, DURING A REPAERG PHASE, WHILE THEY ARE PENDING ON APPEAL. THEY CAN SELL AT ANY STAGE. BY THE WAY THE STATE ATTORNEY, OR THE ATTORNEY FROM THE ATTORNEY GENERAL'S OFFICE WHO IS

REPRESENTING THE STATE IN THE CONDEMNATION ACTION, STATED AND IT'S UNCONTROVERTED THE STATE WAS GOING TO APPEAL THAT. I MEAN THAT WAS NOT THE END OF THE GAME AT ALL.

WELL YOU'RE SAYING YOU WANT, A CASE TO GO -- LIKE THIS TO GO OFF ON WHETHER THE CONDEMNATION OR THE AGREEMENT OCCURRED AS A RESULT OF A JUDGMENT OR A SETTLEMENT. GOING BACK --.

ABSOLUTELY.

TO THE PRINCIPLE AND POLICY BEHIND DAUER AND THE RULE AS STATED, THE SITUATION THAT I SEE THAT THAT CASE, THE NORM THAT WAS BEING ENVISIONED WOULD BE THAT YOU GOT A SALES CONTRACT, GOT A BROKER TRYING TO GET SELLERS. AND THEN DURING THE PERIOD OF TIME THAT THAT SALE CONTRACT IS IN EFFECT, THE STATE COMES IN AND BEGINS CONDEMNATION PROCEEDINGS. THE PROPERTY OWNER REALLY WANTS TO SELL IT, HE'S GOT SEVERAL OTHER PRIVATE PEOPLE. AND BUT ENDS UP -- THE STATE HAS THE SUPERIOR RIGHT. AND THE PROPERTY IS CONDEMNED. THE RULE OF DAUER THEN WOULD SAY THAT THAT'S THE NORMAL SITUATION, YOU'RE NOT GOING TO PAY THE BROKER A COMMISSION WHEN THE SELLER IS NOT A WILLING SELLER BECAUSE THE STATES COME IN. BUT GOING BACK TO THIS CASE, YOU HAVE GOT A SITUATION WHERE THE AFFIRMATIVE INTEREST IS ST. JOE, REALIZING THAT THIS IS REALLY HOW THEY'RE GOING TO GET THE BEST PRICE FOR THEIR PROPERTY. AND AGAIN, I'M STILL TRYING, THE POLICY THAT WOULD PREVENT A BROKER WHO IS NOW WORKING TO EFFECT THAT, FROM GETTING A COMMISSION.

WELL VERY SIMPLY YOUR HONOR. DAUER ALSO SAYS THAT A BROKER IS NOT GOING TO BE ENTITLED TO A COMMISSION. AND I'M GOING A FEW MINUTES INTO MY REBUTTAL TIME NOW, BUT TO ANSWER YOUR QUESTION. A BROKER IS NOT GOING TO BE ENTITLED TO A COMMISSION EVEN IF HE'S THE PROCURING CAUSE OF THE CONDEMNATION. THAT'S NOT TRUE THAT DAUER SAYS OOP, ONLY IF SOME CONDEMNATION COMES OUT CHARGING OUT OF THE BLUE WITH NOBODY KNOWING IT WAS COMING. THE WHOLE POINT FOR DAUER BEING I THINK SETTING THE BEST POLICY FOR THE STATE IS, IT SETS UP CLEARLY THE OBLIGATIONS OF THE PARTIES TO DEFINE THEIR CONTRACTUAL EXPECTATIONS AT THE FRONT END OF A PROCEEDING AND DOES NOT ALLOW A BROKER TO COME IN AFTER THE FACT AND SAY I INTENDED -- WE INTENDED TRULY YOU MUST HAVE MEANT SALE TO MEAN COVERING THIS AS WELL.

YOUR BOTTOM LINE IS THERE HAD TO BE AN EXPRESS AGREEMENT WITH REFERENCE TO COVERING A TRANSACTION LIKE THIS IF IT WAS GOING TO BE COVERED?

WELL MY BOTTOM LINE IS THAT'S WHAT DAUER SAYS AND DAUER WOULD DEFINITELY STATE THE BEST PUBLIC POLICY FOR THE STATE.

BUT ISN'T THERE EVIDENCE THAT THAT'S EXACTLY WHAT HAPPENED HERE? EVIDENCE IN THE RECORD THAT McIVER SPECIFICALLY WENT TO ST. JOE AND SAID HEY, LET'S TRY CONDEMNATION, I THINK WE ARE GOING TO GET A BETTER PRICE ON CONDEMNATION. AND IF THERE IS EVIDENCE IN THE RECORD, COULDN'T A JURY DECIDE THAT THEY AMENDED THEIR ORAL CONTRACT TO INCLUDE CONDEMNATION?

JURY COULD NEVER FIND THAT AS DAUER REQUIRES, THERE WAS AN EXPRESS CONTRACTUAL PROVISION. AND THAT EXPRESS CONTRACTUAL PROVISION PURSUANT TO DAUER APPLIES EVEN WHERE THE BROKER MIGHT BE THE, THE PROCURING CAUSE OF THE CONDEMNATION.

YOU TALKING ABOUT EXPRESS CONTRACTUAL PROVISION BUT YOU AGREE THERE IS NO WRITTEN CONTRACT IN THIS CASE?

THE CLAIM HERE IS FOR AN EXPRESS CONTRACT, A ORAL CONTRACT.

IT IS AN ORAL CONTRACT.

BUT WITH EXPRESS TERMS. I DRAW THE COURT --.

SO IN OTHER WORDS TO DETERMINE THE TERMS OF THE ORAL CONTRACT, WE NEED TO HAVE EVIDENCE OF THE PARTIES TO THE CONTRACT, CORRECT?

THE UNCONTROVERTED EVIDENCE IS THAT THE CONTRACT ENTERED INTO BY THE PARTIES WAS FOR A PERCENTAGE OF THE SALES PRICE AND THE UNCONTROVERTED TESTIMONY IN DEPOSITION IN THIS CASE WAS THAT PURSUANT TO THE CONTRACT THAT THE COMPLAINT RELIES UPON IN THE ABSENCE OF A SALE, THERE WOULD BE NO COMMISSION.

AND CAN'T AN ORAL CONTRACT BE AMENDED?

IT CAN BE EXPRESS CONTRACT, BUT NOT AN IMPLIED AMENDMENT.

CAN AN ORAL CONTRACT BE AMENDED BY THE PARTIES, CAN THEY LATER DECIDE LOOK, WE DECIDED TO GO IN THIS DIRECTION BUT LET'S NOW DECIDE TO GO IN THAT DIRECTION, CAN THEY DO THAT?

THEY CAN ONLY UNDER DAUER, IT MUST BE AN EXPRESS, MUST BE AN EXPRESS AMENDMENT. AND IN THIS CASE THE SUBJECT MATTER WE ARE TALKING ABOUT IS THE TRANSFER OF THE PROPERTY IN QUESTION TO THE STATE. THAT WAS THE SUBJECT MATTER CONTRACTED FOR, THERE WAS AN EXPRESS CONTRACT. IT WASN'T PERFORMED. THERE NEVER WAS A SALE. AND QUITE FRANKLY, --.

TRY TO BE CERTAIN YOU GET A COUPLE MINUTES.

THANK YOU VERY MUCH YOUR HONOR.

P GOOD MORNING.

GOOD MORNING.

MAY IT PLEASE THE COURT, I'M STUART HUFF, WITH MY FRIEND AND CO-COUNSEL BEEN WILKINSON, I REPRESENT BRUCE McIVER. SO YOU ALL WON'T THINK I AM NOT FAMILIAR WITH HIM, I'LL REFER TO HIM AS McIVER.

LET'S MOVE FROM McIVER TO DAUER. WOULD YOU TELL US YOUR TAKE ON WHAT THE RULE OF DAUER IS AND THEN HOW THIS CASE DOESN'T FIT WITHIN THAT RULE AND WHY. WHAT IS THE RULE OF DAUER TO BEGIN WITH?

THE RULE OF DAUER IS THAT UNDER NORMAL CIRCUMSTANCES, A CONDEMNEE IS NOT A WILLING SELLER. THAT IS THE REASON FOR THE THREE PART TEST. AND JUSTICE BELL BROUGHT THAT OUT IN A MERE QUOTE FROM DAUER. I SAY THE MOST IMPORTANT POINT WHICH JUSTICE BELL WENT OVER IS THIS PART FROM DAUER. IN THE NORMAL BROKERAGE CONTRACT, A COMMISSION IS NOT EARNED BECAUSE. EXPLANATION. THAT IS NO BRIGHT LINE RULE LADIES AND GENTLEMEN. BECAUSE HE IS NOT A WILLING SELLER. THERE IS NO BRIGHT LINE RULE TO BE FOUND IN THAT.

SO YOUR INTERPRETATION OF DAUER IS THAT IT SORT OF APPLIES A CLASSIC RULE THAT IF YOU HAVE GOT A SMALL RESIDENT AT THE EDGE OF A ROAD IMPROVEMENT PROJECT, WITH THE FOR SALE SIGN ON THERE, SEE JOHN DOE BROKER, AND THE STATE NOW TAKES THAT BY CONDEMNATION, THAT ORDINARILY JOHN DOE BROKER DOESN'T GET A COMMISSION WHEN THE MONEY IS PAID BY THE STATE,.

YES, SIR.

MY POSITION IS AND BY THE WAY THIS WAS THE EXACT SAME POSITION THAT ST. JOE HAD IN THE FIRST DISTRICT COURT OF APPEAL THAT'S GOT, IT'S COMPLETELY CHANGED. AFTER THAT SHIP SUNK, IT CHANGED ROPES AS AISLE POINT OUT IN A MOMENT.

YOU DON'T DISAGREERX I ASSUME? YOU DON'T DISAGREE THAT THERE HAS TO BE AN AGREEMENT BETWEEN THE PARTIES, IF ANY COMPENSATION IS GOING TO BE DUE ON ANY TRANSACTION, DO YOU?

ON AN EXPRESS CONTRACT? OF COURSE NOT. NO, SIR.

WHAT EVIDENCE IS THERE IN THIS RECORD THAT THERE WAS AN AGREEMENT, A BINDING AGREEMENT BETWEEN THE PARTIES THAT YOUR CLIENT WOULD END UP WITH SOME FEE OR COMMISSION IF THIS PROPERTY ENDED UP BEING ACQUIRED BY THE STATE IN THE MANNER THAT IT WAS?

IT IS UNDISPUTED, AND I SAY THIS WITH SOMEWHAT MORE CONFIDENCE I THINK THAN ST. JOE'S POSITION. IT IS UNDISPUTED THAT MY CLIENT WAS TO RECEIVE A COMMISSION UPON A SALE OF THESE PROPERTIES TO THE STATE OF FLORIDA. WE RETURN TO THE MEETING OF THE DAUER CASE, AND THE CASES WHICH IT IN TURN CITED FROM OUT OF STATE.

UNDER THAT, APPEARS TO ME THAT THE FIRST PRINCIPLE OF DAUER IS WHAT, WHERE IT SAYS IT IS WELL SETTLED THAT A CONDEMNATION PROCEEDING DOES NOT CONSTITUTE A SALE FOR PURPOSES OF THE RIGHT TO BE PAID A REAL ESTATE COMMISSION. DOESN'T IT SAY THAT?

YES, SIR, IT DOES SIR. EXPLAINS BECAUSE AND GOES TO THE THREE PART TEST.

BUT, WHAT BOTHERS ME ABOUT THIS CASE,.

YES, SIR.

IS THAT -- HERE WE HAVE AN ORAL, WHAT IS CLAIMED TO BE AN ORAL AGREEMENT, ABOUT SOMETHING THAT IS VERY TECHNICAL IN NATURE. AS COMES OUT OF THIS DAUER CASE AND APPARENTLY A LONG LINE OF OTHER CASES THAT IF THIS IS ACTUALLY A CONDEMNATION AS OPPOSED TO A PROCURING SALE, THAT THAT'S NOT CONTEMPLATED BY THE BROKERAGE AGREEMENT. AND YET WHAT WE'RE DOING IS WE'RE TRYING TO FIND A WAY TO, IN AN ORAL AGREEMENT, TO MAKE SOMETHING THAT REALLY VARIES THAT RULE BY SAYING WELL, THERE IS AN EXPRESS AGREEMENT THAT THIS COULD BE BY CONDEMNATION. I MEAN ISN'T THAT WHAT'S GOING ON HERE?

I APOLOGIZE, I AM NOT ENTIRELY SURE I FOLLOW YOUR QUESTION.

WELL ISN'T IT TRUE THAT IF -- IF ALL THAT WAS SAID WAS THAT MR. McIVER CALLED ST. JOE ON THE PHONE AND SAID, IF I PROCURE A SALE OF THIS PROPERTY, THEN I GET A TWO PERCENT AND YOU WILL PAY ME A TWO PERCENT COMMISSION AND THEY SAID OKAY, THAT WOULDN'T BE ENOUGH IF THE PROPERTY --.

I'M SORRY SIR. YOU'D HAVE TO GO ON AND GET TO THE SALE. WE RETURN TO DAUER --.

BUT WOULD THAT BE ENOUGH IF THE PROPERTY IS LATER TAKEN BY THE STATE IN CONDEMNATION TO PROCURE -- TO BE ENTITLED TO THE BROKERAGE COMMISSION OF TWO PERCENT UNDER JUST THOSE LIMITED FACTS?

YES, SIR. IF THE THREE CRITERIA, THE THREE TESTS THAT FORM A SALE FOR PURPOSES OF

DETERMINING A BROKERAGE COMMISSION, WITHIN A CONDEMNATION PROCEEDING ARE MET. AND I WAS ASKED WHAT DO YOU THINK THE MEANING OF THE DAUER CASE IS? FIRST OF ALL --.

SO YOU DON'T AGREE THAT THERE HAS TO BE AN EXPRESS PROVISION IN THE AGREEMENT WITH WITH, BETWEEN THE BROKER AND THE OWNER OF THE PROPERTY THAT IF THE PROPERTY IS TAKEN BY CONDEMNATION, I GET TWO PERCENT?

NO, SIR. AND THERE IS NOT A CASE SIMILAR TO THE McIVER CASE BY THE WAY AND THERE IS NOT A CASE IN THIS COUNTRY AND YA'LL KNOW, THERE IS ONLY ABOUT EIGHT OR NINE CASES ON THIS ISSUE EVER REPORTED SO FAR IN THE ENTIRE LAND. THERE IS NOT A CASE YET INCLUDING DAUER, THAT SAYS IF A BROKER WORKS DILIGENTLY WITH THE STATE AT ALL TIMES. SO WE ELIMINATE THE SO-CALLED UNEXPECTED CONDEMNATION OR JUSTICE CANTERO MENTIONS, ISN'T IT TRUE THAT IN DAUER, DOCTOR DAUER NEVER INTENDED, NEVER EVEN TALKED ABOUT SELLING THE PROPERTY TO THE STATE. SO WE ELIMINATE THAT POSSIBILITY. THEN YOU HAVE A BROKER WHO WORKS FOUR YEARS, WHO WASN'T BROUGHT ON OUT OF KINDNESS BY ST. JOE. IT KNOWS WHAT IT IS DOING. THAT IS WHY IT HIRED McIVER. ST. JOE DOESN'T GO AROUND SAYING I SEE THERE IS A NEW REAL ESTATE GUY IN TOWN, LET'S PUT HIM ON COMMISSION AND SEE IF HE CAN GET HIS FAIRS SALE. THEY KNEW WHAT THEY WERE DOING. THEY ALSO KNEW WHEN McIVER EXPLAINED TO IT THEM, IF YOU GET INTO A CONDEMNATION, YOUR PROPERTY RIGHT NOW HAS BEEN MANDATED DOWN ZONED BY THE POWER OF FLORIDA, TO ONE UNIT PER EVERY FIVE ACRES AND ONLY APPRAISES AT 27 MILLION DOLLARS, AS SOON AS WE GET INTO THAT CONDEMNATION PROCEEDING, SAYS MR. SCAN LAND AS WELL FROM THE STATE, THE RULES CHANGE. QUOTE THE RULES CHANGE. NOW WE DON'T HAVE TO APPRAISE ONLY UPON EXISTING ARTIFICIAL DOWN ZONING. NOW WE BEGIN TO NEGOTIATE AND APPRAISE THE PROPERTY BASED UPON ITS POSSIBLE HIGHER AND BEST USE AND NOW IT GOES FROM ONE UNIT PER FIVE ACRES TO EIGHT UNITS FOR --.

THE RECORD REFLECT WHY THIS IS AN ORAL AGREEMENT AS OPPOSED TO WRITTEN AGREEMENT?

NO MORE I THINK JUSTICE THAN THERE EVER WOULD BE WHERE TWO MEN AGREED ON SOMETHING. I WILL ADD HOWEVER THAT BRAURS McIVER HAD WORKED WITH THE LATE JACOB BEALLAND FOR ST. JOE FOR SOMETHING LIKE TEN OR MORE YEARS ALWAYS ON ORAL AND HAND SHAKE AGREEMENTS.

AND WHAT DOES THIS, WHEN JUSTICE LEWIS REFERS TO UNDISPUTED FACT THAT THIS WAS A CONSULTING AND BROKERAGE AGREEMENT, WHAT WAS THE CONSULTING NATURE OF THE AGREEMENT?

JUST CONSULTING SERVICES, NOT WELL DEFINED. I WISH I COULD TELL YOU HERE IS EXACTLY WHAT THE CONSULTANT'S NATURE AND HOW IT DIFFERED FROM THE BROKERAGE. HE WAS IN FACT -- THOUGH IT IS AN IMPORTANT POINT. IT IS JUST ONE I CAN'T GET A FIRM GRASP ON AND HAND TO YOU. BUT HE WAS TO CONSULT. KEEP IN MIND AS I MENTIONED A MOMENT AGO, THIS WAS NOT A REAL ESTATE BROKER WITH A SIGN OUT ON A SHOP DOWNTOWN JUST TAKING LISTINGS. BRUCE McIVER MADE HIS LIVING ON WORKING A CABINET AND ON WORKING THE DNR PEOPLE -- I BELIEVE SO, AND THE DEP PEOPLE. AND THE CARL LIST, BECAUSE THOSE WERE HIS CONTACTS. AND JAKE BEAL ENEDZ LAND KNEW IT. THAT WAS THE ONLY REASON, THERE WAS NO OTHER BROKER ON THIS HUNDRED MILLION DOLLARS PIECE OF PROPERTY. NO ONE ELSE.

CAN I ASK YOU, YOUR OPINION, DOES DAUER PRESENT A BRIGHT LINE RULE THAT A BROKER CAN NEVER RECEIVE A COMMISSION FOR CONDEMNATION?

NO JUSTICE CANTERO. I STARTED TO SAY A MOMENT AGO, NOT ONLY IS NO CASE SAY THAT AND DAUER DOESN'T SAY IT. AND IF DAUER MEANT THAT JUSTICE CANTERO, WHY WOULD IT THEN SAY AFTER THE WORDS BECAUSE HE IS NOT A WILLING SELLER, IT LINES UP THE THREE PART TEST FOR WILLING SELLER? AS THE FIRST DISTRICT SAID, WHAT'S THE MEANING OF THAT? IF THERE IS A SUPPOSED BRIGHT LINE TEST, WHICH NO ONE IN THIS NATION THINKS EXCEPT ST. JOE,

AND THEY ONLY THOUGHT OF IT WHEN THEY CAME TO THE SUPREME COURT. NO ONE HAS EVER THOUGHT THAT BEFORE. THEN WHAT IS THE MEANING OF THE THREE PART TEST FOR THE WILLING SELLER?

DOESN'T ESTABLISH A BRIGHT LINE RULE AND IF IT DISTINGUISHED KEYS IN DAUER, AND IF THE FIRST DCA HERE DISTINGUISHED DAUER, THEN IS THERE NO CONFLICT FOR US TO RESOLVE?

I TROUBLED OVER THAT QUESTION. AND KIND OF HOPED I WOULDN'T BE ASKED. HOWEVER, BECAUSE I DO AND I HOPE I DON'T -- LOOK AT MY TIME. BECAUSE OF COURSE I WANT MY ISSUES THAT I HAVE RAISED, MY CONTRACT AND CONTRACT IMPLIED LAW, TO BE HEARD. I THINK I CAN GIVE A WE STRAIGHTFORWARD ANSWER. THE PROBLEM WITH THE DAUER CASE AND WHAT'S COST MY CLIENT TWO YEARS AGO WHEN HE SHOULD'VE TRIED IT, IS THAT DAUER FIRST OF ALL CORRECTLY, IF WILSON'S GOING TO BE OUR LAW, IT IS A 60-YEAR-OLD COLORADO CASE, WE ARE NOT EXACTLY BOW ARE AT THE ALL TAR OF THE WILSON CASE EITHER. HIGHEST LAW IN THIS STATE IN COMMON LAW IS MADE IN THIS BUILDING. NOT IN COLORADO JUST AFTER THE SECOND WAR. BUT, IF WE FOLLOW WILSON, IT IS A PRACTICAL THREE PART TEST. THEN YOU KNOW YOU DON'T HAVE A BRIGHT LINE WHATSOEVER. AND DAUER ADOPTS IT AND OUR FIRST DISTRICT SMART, VERY SMARTLY SAYS, IF THE DAUER COURT HAD ADOPTED ST. JOE'S POSITION, THAT THERE WAS A BRIGHT LINE RULE, WHY DID IT GO INTO AN EXTENSIVE FACTUAL ANALYSIS? DIDN'T NEED TO GO INTO THE THREE-PART TEST. HERE IS THE PROBLEM AND I THINK THE REASON THE COURT TOOK THIS. BECAUSE THERE DOESN'T SEEM TO BE A CON FIKT IF THERE IS A THREE PART TEST. DAUER GOES OFF IN MY OPINION -- NEVER THE APPROPRIATE THING TO USE UNDER APPELLATE OPINION -- DAUER GOES ON TO MENTION THAT CONDEMNATION CAN NEVER MEET THE THREE TESTS THAT WE JUST TALKED ABOUT. OF COURSE IT CAN'T. YOU HAVE JUST LAID THEM OUT. IT SAYS HE'S NOT A WILLING SELLER -- I'M SORRY, IT IS BECAUSE HE IS NOT A WILLING SELLER. THE NEXT SENTENCE, HERE IS THE THREE TEST FOR A WILLING SELLER. WHO, IF THEY WERE THINKING LOGICALLY THROUGH IT, WOULD THEN CONCLUDE THAT PARAGRAPH WITH, AND OF COURSE CONDEMNATION CAN NEVER MEET THESE TESTS. THERE IS THE CONFLICT BECAUSE CLEARLY THE FIRST DISTRICT DOESN'T AGREE AND SAYS THERE IS NO SUCH BRIGHT LINE. AND I MIGHT POINT OUT, I HAVE MENTIONED THIS NAB OF TIMES AND COURT MAY NOT BE TOO ASSIMILATED WITH THIS ARGUMENT BUT I DO WANT YOU TO UNDERSTAND, IF I MAY, THAT IN THE FIRST DISTRICT COURT OF APPEAL, ST. JOE DIDN'T EVEN KNOW OF THIS SO-CALLED BRIGHT LINE.

BUT THE LAST LINE, AFTER THEY RECITE THE THREE PRONGS OF WILSON, THEY SAY OBVIOUSLY CONDEMNATION THEEDZ NONE -- MEETS NONE OF THESE TESTS. SO AFTER, IT SEEMS READING THAT AS A WHOLE, THAT THERE IS A BRIGHT LINE BEING STATED IN DAUER. AND IN TERMS OF CONDEMNATION, HOW IN THIS CASE, IF SAY THE JURY IS TO BE INSTRUCTED THAT IT IS THE SALE ONLY IF IT'S, YOU KNOW, MEETS THREE TESTS, LET'S ASSUME THAT'S SAID. HOW DID ST. JOE HAVE THE POWER TO NEGOTIATE A SATISFACTORY PRICE ONCE THE STATE INITIATED CONDEMNATION PROCEEDINGS?

THEY KNEW, JUSTICE PARIENTE, THAT THEY WOULD HAVE ALL OF THE LEVERAGE BECAUSE AS I MENTIONED A MOMENT AGO, THEY KNEW THAT ONCE YOU GOT INTO CONDEMNATION, THE RULES CHANGE.

I UNDERSTAND THAT IT ENDED UP FOR ST. JOE'S BENEFIT BECAUSE WHEN THEY WERE GOING TO TRY TO GET INTO THAT CONSERVATION AND RECREATION LAND, I THINK THE APPRAISED VALUE WAS WHAT, 27 MILLION AND THEY END UP WITH AN 84 MILLION DOLLAR SO IT IS, THIS IS BETTER FOR THEM. I UNDERSTAND THAT. BUT AT WHAT -- IN LOOKING AT WHAT THE TRIAL COURT SAID IN THIS CASE, FOR BETTER OR WORSE, ONCE THE PROCEEDINGS WERE INITIATED AGAINST THE DEFENDANTS PROPERTY AND HAD NO AUTHORITY TO WITHDRAW FROM THE NEGOTIATIONS OR TO REFUSE TO SELL THE PROPERTY TO THE STATE, SO WITH THAT IN MIND, ARE YOU RELYING IN THIS CASE ON THE ADDITIONAL FACT THAT AT THE TIME THAT THE PRICE WAS ARRIVED AT, THAT

THERE HAD BEEN A DISMISSAL OF THE CONDEMNATION PROCEEDINGS?

NO, MA'AM. GLAD YOU ASKED ME THAT BECAUSE IT IS ONE THING I WANT TO COLLAR FIRX ST. JOE PUT BOTH IN HIS BRIEF AND CLEVELAND MENTIONED THIS MORNING. HE PUTS IN HIS BRIEF THAT ST. JOE KA PIP ULTED ONCE IT WAS KNOWN THAT AN APPEAL WOULD BE TAKING WITH NO RECORD CITATION WHATSOEVER. THAT IS NOT WHAT HAPPENED. NO RECORD KRITATION. WHAT REALLY HAPPENED IS ACCORDING TO MR. SCANNEDLAND, AFTER THEY LEARNED OF JUDGE RECOMMENDING TON'S ORDER -- I'M SORRY. I ASKED HIM HAD THE ATTORNEY GENERAL LOST BARGAINING LEVERAGE WHEN JUDGE RECOMMENDING TON ASKED THE STATES CASE BE DISMISSED. I SAID THAT PROBABLY BE TRUE. THE STATE HAD LOST. WHEN THEY LEARNED JUDGE RECOMMEND INC. TON HAD RULED IN FAVOR OF ST. JOE, ST. JOE DIDN'T REALLY WANT TO WIN. THAT WAS STRICTLY A SEPARATE THING. SCANNEDLAND SAYS WE HAD PRETTY MUCH NEGOTIATED DOWN TO THE LAST FEW TERMS, JUSTICE PARIENTE, IRRELEVANT RESPECTIVE OF RECOMMEND INC. TON'S ORDER COMING OUT. OBVIOUSLY THAT PUSHED US, THE STATE INTO MAYBE CONCEDING A COUPLE OF THINGS AT THE END. NOT ST. JOE'S CAPITULATION, ALL THE LEVERAGE SHIFTED OF COURSE TO THE OTHER SIDE. AND YOUR HONOR, I DON'T KNOW IF I DIFFICULT GREASED YOUR QUESTION.

BECAUSE FIRST THE QUESTION AND IT WAS A THREE PART QUESTION, IS THAT WHETHER OR NOT DAUER CONFLICTS DEPENDS ON THAT WHOLE READING THAT WHOLE PARAGRAPH IN CONTEXT, AND THE LAST ONE SAYS OBVIOUSLY CONDEMNATION MEETS NONE OF THESE TESTS, WHICH IS THE WILSON THREE PART TEST. SO IT SEEMS TO THEN HE VIS EARTH FOR THE PURPOSE OF A CONDEMN NATION ACTION THE WILSON THREE PART TEST AND SAY IF IT IS CONDEMNATION, IT IS NOT A SALE. SO IF, SO THAT WOULD ESTABLISH CONFLICT IF.

ONE PART HAS TO GO. I DON'T KNOW IF I AM ON THAT SAME PARJS IS ON. SOME THINGS GOT TO GO -- I DON'T MEAN TO SPEAK OVER YOU I AOL JIS.

EITHER THE THREE PART TEST IS THE EXCEPTION TO THE GENERAL RULE. OR IT NEVER, CONDEMNATION NEVER MEETS.

IF I CAN ASK THE RHETORICAL QUESTION. OBVIOUSLY TO WHOM? I REPRESENT A CLIENT UNDISPUTED FACTS SO FAR. I KNOW I HAVE GOT TO GO BACK AND SHOW THEM TO THE JURY ALL OVER AGAIN, CAN'T JUST READ THE JUDGE'S ORDER AND WIN THE CASE. THIS IS A CONDEMNATION PERFECTLY SUITED FOR THREE PART TEST BEING MADE.

MY QUESTION IS IF THIS IS A CONFLICT THAT WE HAVE TO RESOLVE, WHY IS THE WILSON TEST, LIKE YOU SAID, A TEST FROM 50 YEARS AGO, FROM COLORADO, WHY IS THAT THE APPROPRIATE TEST TO USE IN THESE PARTICULAR CIRCUMSTANCES WHERE AT LEAST IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, THE BROKER AND THE SELLER HAVE AGREED THAT CONDEMNATION IS AN ALTERNATIVE TO A SALE THAT WOULD BE AMENABLE TO THE SELL SENATOR.

JUST CANTERO, A MOMENT AGO THIS IS A QUESTION I THOUGHT ABOUT AND WAS HOPING I WOULD HEAR THIS MORNING. YOU'RE EXACTLY RIGHT. WILSON THREE PART TEST HAS WIGGLED ITS WAY IN 21 YEARS AGO IN THE FLORIDA LAW. IN ABSENCE OF REALLY ANY OTHER LAW. IT DOESN'T MEAN THAT THE WILSON THREE PART TEST IS SOME SORT OF A SCRIPTURE WHICH THIS COURT HAS TO FOLLOW. AND NOW ON YOUR EXACT QUESTION, IF I WERE ASKED, LAST TIME I WAS HERE JUSTICE LEWIS SAID MR. HUFF, HOW DO YOU THINK WE OUGHT TO DO SUCH AND SUCH? HERE IS WHAT WOULD MAKE SENSE TO ME. WHAT ABOUT IF THE BROKER HIMSELF HAS EITHER ACQUIESCED IN OR FULLY SUPPORTED THE, HIS BROKER OR HIS CONSULTANT IN GETTING INTO THE CON TEM NATION FOR CERTAIN BENEFITS? NOT THE LEAST OF WHICH IS FEDERAL TAX BENEFITS. THE WHOLE SEPARATE SUBJECT BUT THAT'S NOT FOREIGN TO THE RECORD. IT'S BEEN DISCUSSED. I DON'T THINK THAT THIS COURT -- I DON'T THINK IT WILL, SAY I'LL TELL YOU WHAT,

THAT 1947 WILSON CASE IS THE LAW OF THE LAND TO US AND ALL WE HAVE TO DECIDE IS WHY DAUER SAID OBVIOUSLY IT CAN'T BE MET IN THE CONDEMNATION. IT'S A GOOD PRACTICAL TEST, BUT I DO THINK THERE, IT'S APPROPRIATE FOR THIS COURT TO ADD, BUT OBVIOUSLY IF YOU WANT TO HAVE SOME ADDITIONAL TEST OF A WILLING SELLER, THE ST. JOE OF THE WORLD WHO SAYS IF YOU TELL ME THAT THE APPRAISALS WILL TRIPLE UNDER THE RULE CHANGE WHEN WE GET INTO CONDEMNATION, GO WITH IT. THIS IS NOT PIN THE TALE ON THE DONKEY WITH THE BLIND FOLD ON. BEEN TRYING TO GET BACK TO JUFLT PARIENTE'S QUESTION REGARDING HOW DID THEY KNOW? WHAT CHOICE DID THEY HAVE? HOW DID THEY KNOW THEY COULD NEGOTIATE A SUCCESSFUL PRICE? IT WAS A DEAD-ON CERTAINTY AND THE APPRAISALS IMMEDIATELY AFTER THE STATE AGREED TO GO TO EIGHT UNITS PER ACRE, A 40% INCREASE OVER THE PRIOR ZONING IN DENSITY, THE STATE'S LOWEST APPRAISAL SUDDENLY JUMPED TO 66 MILLION. AND ST. JOE'S HIGHEST APPRAISAL WENT TO 104 MILLION. THEY KNEW, I NEVER KNEW BEFORE, I DON'T KNOW IF THE COURT KNOWS OR NOT BUT IT IS A REALLY INTERESTING PROCESS THAT TAKES PLACE. BECAUSE THEN THEY JUST TALK ABOUT DUELING APPRAISALS.

DOES THE RECORD REFLECT A VALUATION EITHER BY FORMAL APPRAISAL OR OTHERWISE OF THE PROPERTY PRIOR TO AGREEING --.

YES, SIR.

ANTICIPATED WHAT THE VALUE WOULD BE?

YES, SIR. WHAT HAPPENED WAS PRIOR TO THAT THE STATE APPRAISED IT BASED ON THAT ONE MAN'S HOUSE IN THE MIDDLE OF FIVE ACRES OF WOODS OVER ON THE BEACH. AND IT CAME IN THE 27 MILLION DOLLARS.

THAT WAS FOR THE PURPOSE OF THAT, THE LAND TRUST?

I DIDN'T UNDERSTAND THE LAST WORD.

THAT WAS FOR THE PURPOSE OF WHEN THEY WERE SEEING WHETHER IT COULD BE ACQUIRED UNDER THAT LAND TRUST MONEY? IS THAT RIGHT?

YES, MA'AM. I THINK THIS WAS ON CARL, UNDER CARL AS WELL. WHAT HAPPENED WAS, YOU MAY RECALL, THE STATE HAD MADE HIGHER OFFERS ORIGINALLY. AND THEN THE CABINET DIDN'T APPROVE IT. THEN THE STATE MANDATED WALTON COUNTY TO DOWN ZONE. WALTON COUNTY DIDN'T LIKE THAT AND THEY OPPOSED THE CONDEMNATION BECAUSE IT HURT THEIR TAX BASE. STATE THEN APPRAISED AS IT WAS REQUIRED TO DO BEFORE CONDEMNATION, AT 27 MILLION DOLLARS, WITH THE CLEAR UNDERSTANDING ON ST. JOE'S PART THAT ONCE YOU GOT INTO THE CONDEMNATION GAME, NOW YOU WOULD SIT DOWN WITH MR. SCANLAND IN HIS DEP PORX I HAVE IT MARKED BUT I'M ALSO UNDER OATH, OVER 20 MINUTES.

WE ARE GOING TO HAVING TO DRAW TO A CLOSE.

THEY KNEW IT WAS A NO LOSE PROPOSITION. THEY SPLIT THE DIFFERENCE BETWEEN 66 MILLION AND 84 MILLION. I AM SORRY THAT I RAN OVER. I APPRECIATE ALL THE QUESTIONS YA'LL ASKED. AND THANK YOU VERY MUCH.

THANK YOU. MR. MARSHAL, HOW MUCH TIME FOR REBUTTAL? OKAY, WE WILL GIVE YOU ABOUT THREE MINUTES.

YOUR HONOR, I THINK IT IS AGREED DAUER DECISION, WHICH WE ARE HERE ON CONFLICT WITH, DOES HAVE A BRIGHT LINE TEST. IT SIMPLY SAYS, AS JUSTICE PARIENTE NOTED, THAT IF YOU'RE -- IF YOU HAVE A TAKING THAT'S LIKE CONDEMNATION, IT IS JUST NOT GOING TO MEET THOSE TESTS. AND THOSE TESTS WHICH ARE REALLY JUST THE WAY THE WILSON CASE 60 YEARS AGO

DIFFERENTIATED NEGOTIATIONS, WHICH ARE SALES FROM CONDEMNATIONS, THOSE TESTS SIMPLY DON'T APPLY IN THIS CASE. YES, YOUR HONOR?

BUT IF DAUER APPLIES A BRIGHT LINE TEST AND IT CON FLIKTS WITH KEYES, THAT DOES NOT ESTABLISH A BRIGHT LINE TEST, THEN THE QUESTION FOR US, SHOULD THERE BE A BRIGHT LINE TEST?

WELL YOUR HONOR I THINK YOU WILL SEE THE KEYES DECISION ALSO STATES THE RULE THAT CONDEMNATION CANNOT BE A SALE.

THEN YOU'RE SAYING THERE IS NO CONFLICT AND WE SHOULD DISCHARGE? BECAUSE IF THERE IS A CONFLICT IT IS THE FACT DAUER STAEBBS A BRIGHT LINE TEST AND KEYES DOESN'T. IF NOT, THERE IS NO CONFLICT AND WE SHOULD DISCHARGE. IF THERE IS A CONFLICT WE NEED TO RESOLVE WHETHER THERE SHOULD BE A BRIGHT LINE TEST.

YOUR HONOR, THE FIRST DISTRICT COURT OF APPEALS IN THIS CASE STATED THAT THERE IS NO BRIGHT LINE TEST. CONTRARY TO WHAT M HUFF SAID, WE ALWAYS HAVE TAKEN THE POSITION THERE WAS A BRIGHT LINE TEST. THAT'S WHY THE FIRST DCA DECISION TALKS ABOUT OUR POSITION BEING A BRIGHT LINE TEST.

LET ME ASK, IF WE ADOPT A BRIGHT LINE TEST, AND I UNDERSTAND THE CONCERN ON THE OTHER PART ABOUT EVERY TIME THERE IS A CONDEMNATION A BROKER COMING IN, AND I HAVE SOME CONCERNS ABOUT THAT. BUT THE OTHER PART OF THAT IS IF WE ADOPT THE BRIGHT LINE TEST THAT YOU SUGGEST, WHAT IS THERE TO PREVENT THE GOVERNMENT AND A WILLING SELLER TO SAY WELL THIS IS ALL GOING TO COST US LESS IF WE HAVE A FRIENDLY CONDEMNATION, FILE THE PROCEEDINGS, ENTER INTO A CONSENT AND JUDGMENT AND WE CAN AVOID PAYING THIS, THE NORMAL COMMISSION OF SIX, SEVEN, EIGHT, MAYBE EVEN 10 PERCENT ON A COMMERCIAL PIECE OF PROPERTY, AND IF THEY HAVE GOT THIS BRIGHT LINE TEST WE HAVE GOT TO COVER, WE CAN AVOID THE COMMISSION AND COST THE GOVERNMENT LESS, AND YOU'LL GET MORE IN YOUR POCKET. PLUS THE TAX BENEFITS OF CONDEMNATION.

WELL YOUR HONOR, YOUR QUESTION ALMOST PRESUPPOSES THAT OTHERWISE IF THEY DIDN'T GO THAT WAY, THEY WOULD HAVE AN OBLIGATION TO PAY A COMMISSION. THERE WAS NO OBLIGATION TO PAY MR. McIVER A COMMISSION, BECAUSE MR. McIVER HAD NOT PERFORMED HIS PRESS CONTRACT WHICH WAS TO PRODUCE A SALE.

IN THIS CASE THOUGH, HE WAS FIRST TRIED TO GET A SALE THROUGH THIS CARL PROCEDURE, RIGHT, WHERE THIS, YOU WOULD AGREE IF SALE HAD BEEN CONSUMMATED, THROUGH THE STATE OFFERING TO PAY THROUGH THE LAND TRUST, THEY WOULD HAVE -- HE WOULD HAVE GOTTEN A COMMISSION. THE MOST THEY OFFERED THERE WAS WHAT, 25 MILLION DOLLARS.

IT HAD VARIED.

34, 25. THEY BOTH SAID NO.

IT HAD GONE DOWN.

I WANT MORE. WE WANT 50 MILLION. AT THAT POINT, UNDER THE LIGHT MOST FAVORABLE TO McIVER, HE THEN GOES AND SUGGESTS CONDEMNATION AND NOW THEY END UP WITH FOUR TIMES THE PRICE THAT THE STATE ORIGINALLY HAD AGREED TO PAY.

YOU MAKE YOUR COMMENT ON THAT BUT THEN WE ARE GOING TO HAVE TO CLOSE.

THAT'S FINE YOUR HONOR. THANK YOU. CONDEMNATION WAS NOT WHAT WAS CONTEMPLATED WHICH THE -- THE ORAL AGREEMENT THAT THE RESPONDENTS RELYING UPON, HE ENTERED INTO

AN ORAL AGREEMENT. HE PLED WHAT THE ORAL AGREEMENT WHAT. IF YOU LOOK AT COMPLAINT, THE CLAIMS THAT WERE BEFORE JUDGE LEWIS AND THE TRIAL COURT AND HAD EVERY STAGE THEREAFTER, EVERY COUNT WAS ALWAYS GOING BACK AND SAYING THE LANGUAGE IS RIGHT HERE IN THE COMPLAINT, I WANT MY TWO PERCENT SALES COMMISSION. I WANT MY TWO PERCENT SALES COMMISSION. HE WAS THEREFORE TWO PERCENT SALES COMMISSION FOR PRODUCING A SALE AND CONSULTING, ALL HE WAS EVER GOING TO GET PAID FOR CONSULTING OR DOING ANYTHING WAS A TWO PERCENT SALES COMMISSION. HE NEVER -- HE NEVER PRODUCED THAT. AND HE HAD NO ROLE IN THE CONDEMNATION PROCEEDING. HE DID NOT -- HE DID NOT ACHIEVE THAT THAT WAS ACHIEVED BY CONDEMNATION LAWYERS.

THANK YOU VERY MUCH. THANK YOU ALL VERY MUCH.