

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Delta Property Management v. Profile Investment, Inc.

MARSHAL: PLEASE RISE. PLEASE BE SEATED.

GOOD MORNING AGAIN, AND WE APPRECIATE COUNSEL BEING READY. DELTA PROPERTY MANAGEMENT VERSUS PROFILE INVESTMENTS INC.. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM JOHN BERANEK. I AM HERE TODAY, WITH JOHN HARGROVE, WHO IS CO-COUNSEL. ILL PROBABLY BE DOING THE WHOLE ARGUMENT, UNLESS I NEED TO ASK MR. HARGROVE MR. CHIEF JUSTICE

UNLESS HE BAILS YOU OUT.

UNLESS I NEED TO GET HELP FROM HIM. I REPRESENT DELTA PROPERTY MANAGEMENT INC., WHICH IS A COMPANY WHICH LOST OR FORFEITED ITS PROPERTY, BECAUSE THE NOTICE OF A TAX SALE WAS MAILED, WAS NOT MAILED, TO ITS ADDRESS AS STATED IN THE LATEST TAX ROLL. AS REQUIRED BY THE FLORIDA STATUTES GOVERNING TAXATION.

HOW ABOUT SPOON FEEDING THIS STATUTORY SCHEME.

YES, SIR.

THAT IS INVOLVED HERE, AND SORT OF GIVE WAS THUMBNAIL SKETCH OF WHAT ACTUALLY HAPPENED.

WE, THE FIRST DISTRICT HAS LAID IT OUT. THE FOURTH DISTRICT HAS LAID IT OUT, IN A CASE ALMOST EXACTLY THE SAME, AND TWO STATUTES MOST IN QUESTION ARE 197.502 AND 197.522, AND I THINK THE OVERRIDING QUESTION IS WHETHER THOSE TWO STATUTES GET CONSTRUED IN PARAMATTER A, TO -- IN PARAMATT EERIE, WHICH -- IN PARAMATERIA, THAT THE NOTICE OF TAX SALE WAS, YOU HAVE GOT TO SEND TO THE LAST ADDRESS ON THE TAX ROLL. IN THESE CASES THERE IS A LITTLE CONOLOGY BUT IT IS FAIRLY SIMPLE.

YOU WOULD HAVE TO AGREE THAT THE CLERK IN THIS CASE, ACTUALLY MAILED THE NOTICE PURSUANT TO THE STATUTE, WHICH SAYS THAT YOU MUST MAIL THE NOTICE FROM, BASED ON THE STATEMENT FROM THE TAX COLLECTOR. IS THAT NOT CORRECT?

THE CLERK DID MAIL THAT NOTICE, PURSUANT TO THE ADDRESS ON THE STATEMENT FROM THE TAX COLLECTOR, AND THE PROBLEM IN THIS CASE IS THAT A NEW TAX ROLL HAD COME OUT IN THE MEANTIME.

SO IS THERE ANY STATUTORY PROVISION THAT REQUIRES THE CLERK TO DO OTHER THAN WHAT THE CLERK DID.

THE STATUTE IS, DOES NOT GIVE THE CLERK A DEADLINE FOR WHEN THE CLERK MUST SEND OUT THE NOTICES.

SO YOU WERE GOING ON THE CHRONOLOGY, SO THE TAX DEEDS APPLIED TO IN APRIL OF 2000, THE TAX COLLECTOR, THEN, FORWARDS THE 1999 STATEMENT IN MAY OF 2000, CORRECT?

I AM SORRY. I MISSED, MAY OF 2000 WAS THE TAX COLLECTOR GIVES THE, WHAT IS CALLED THE OWNERSHIP AND ENCUMBRANCE REPORT, TO THE -- ENCUMBRANCE REPORT TO THE CLERK OF THE COURT.

BECAUSE THE TAX BILLS AREN'T PREPARED UNTIL JULY, AT THAT POINT THAT IS THE STATEMENT. THE OLD ADDRESS ON IT.

SO IF IT WAS SET TO MAIL IN JULY --

IF THE CLERK HAD MAILED IT IN JUNE --.

BECAUSE OF THE DELAY OF NOT SPENDING THE TAX SALE OUT UNTIL ACCEPTANT, AND THEN -- SUDDENLY SEPTEMBER, AND THEN THEY GET BACK UNDELIVERABLE, THEN AT THAT POINT THEIR OBLIGATION, YOU SAY, WAS JUST TO SEEK THE UP DADE --

JUST TO SEEK, AS THE JUDGE SAID AND THE FOURTH DISTRICT SAID, THE CLERK, IN THIS INSTANCE, WHEN THE CLERK IS DEALING WITH A STALE REPORT FROM THE COLLECTOR, THE -- WITH A STALE REPORT FROM THE COLLECTOR, THE CLERK SHOULD HAVE SIMPLY REQUESTED AN UPDATE.

SO WE ARE DEALING HERE --.

THEY ALL BECOME STALE ON JULY 1.

YES, SIR, THEY WOULD. SO IT IS INCUMBENT UPON THE CLERK, AS OF JULY 1, TO REJECT ALL OF WHAT HAS BEEN RECEIVED FROM THE TAX COLLECTOR PRIOR TO THAT, AND IMMEDIATELY SEARCH AND SEE IF THERE ARE ANY NEW ADDRESSES.

JUSTICE WELLS, WE DON'T SUGGEST THAT THE CLERK HAD TO DO ANY SEARCHES OF ANY PUBLIC RECORDS OR REJECT EVERYTHING THAT THE COLLECTOR HAD GIVEN HIM.

BUT IN REAL LIFE, THEY ARE GETTING THESE ON A REGULAR BASIS. I MEAN THEY ARE GETTING SOME ON JUNE 30.

THEY MAY WELL BE, YES.

AND JUNE 30, IS GOING TO HAVE THE OLD ADDRESS.

BUT ALL THE CLERK HAD TO DO, AS SUGGESTED BY TWO, AT LEAST THREE JUDGES, NO, FOUR JUDGES, ALL THE CLERK HAD TO DO WAS JUST REQUEST AN UPDATE FROM THE COLLECTOR. WHICH, OF COURSE, IN TODAY'S WORLD OF TECHNOLOGY, WOULD HAVE PROBABLY TAKEN TEN MINUTES, IF THAT.

NOW, IN YOUR CIRCUMSTANCES, THE, I THINK, DELTA PROPERTY, THEY SENT A NOTICE OF NEW ADS IN DECEMBER '99 -- OF NEW ADDRESS IN DECEMBER OF '99?

YES. THEY HAD SENT IT, AND WHEN THE COLLECTOR PREPARED HIS STATEMENT, HE JUST DIDN'T REALIZE OR DIDN'T NOTICE IT. HE DID EVENTUALLY NOTICE IT, BECAUSE HE PUT THE CORRECT ADDRESS ON THE 2000 ROLL, AND THE 2000 ROLL HAD THE CORRECT ADDRESS, AND WE SAY WAS THE LATEST ROLL.

WHAT HAPPENS IN THE CIRCUMSTANCE WHERE ALMOST THE SAME FACTS, DECEMBER '99, THE NEW ADDRESS IS SENT IN MAY. THE TAX COLLECTOR SENDS THE ADDRESS OVER TO THE CLERK WITH THE OLD ADDRESS ON IT, AND IN JUNE, THE CLERK SENDS THE NOTICE WITH THE OLD ADDRESS. DID THE TAX COLLECTOR HAVE THE OBLIGATION TO PUT THE NEW ADDRESS ON THERE

BEFORE THEY, BEFORE HE FORWARDED IT ON TO THE CLERK?

JUSTICE CANTERO, I WOULD SUGGEST THAT, IF THE FACTS WERE THAT WAY, THE CLERK WOULD HAVE DONE THE CLERK'S JOB, AND WE WOULDN'T BE HERE. BUT IT DIDN'T HAPPEN THAT WAY. INSTEAD.

I UNDERSTAND.

THERE WAS OVER A THREE-MONTH DELAY, AND DURING THAT TIME, THE NEW ROLL CAME OUT.

IS THE PROBLEM, I KNOW, AGAIN, THE CLERK, YOU ARE SAYING THE CLERK HAS TO DO THIS, BUT, OBVIOUSLY WE CAN'T CHANGE THE STATUTE, BUT IT LOOKS LIKE THAT THESE THINGS ARE COMING UP IN A WAY THAT, WHERE THEN AS JUSTICE IRVIN POINTS OUT THERE, MAYBE CONSTITUTIONAL INFIRMITIES IN THE WAY THE STATUTE IS BEING APPLIED.

AND JUSTICE IRVIN AND, IN THE BARON VERSUS RHETT CASE, SOLVE THOSE CONSTITUTIONAL PROBLEMS UNDER MENNONITE AND DAWSON, BY CONSTRUING THE STATUTES IN PARAMATT ERA, AND SAYING IT ACCOMPLISHES A CONSTITUTIONAL RESULT.

BUT AS FAR AS FROM WHAT JUSTICE WELLS IS SAYING, THE PRACTICAL RESULT MIGHT BE IF THE LEGISLATURE WAS TO LOOK AT THIS AND WAS TO PUT SOME OBLIGATION ON THE TAX COLLECTOR, WHO IS GETTING THIS INFORMATION, RATHER THAN HAVE THE CLERK HAVE TO BE GOING BACK AND CHECKING IT.

WITHOUT QUESTION, THERE IS A GLITCH IN THE STATUTES.

THERE IS NO TIME LIMIT ON WHICH TO SET THE SALE?

YOU HAVE TO SET THE SALE ON 20 DAYS' NOTICE, BUT THERE IS NO TIME LIMIT ON WHEN THE CLERK HAS TO SEND OUT THE NOTICES.

AFTER THE RECEIPT OF THE STATEMENT.

AFTER THE RECEIPT OF THE STATEMENT. THAT'S RIGHT. THERE IS NO CLOCK THAT STARTS TICKING WHEN THE CLERK GETS THE STATEMENT.

THEY CAN WAIT THREE YEARS?

THEY COULD WAIT THREE YEARS AND YOU WOULD HAVE THREE INTERVENING TAX ROLLS. I MEAN, THAT WOULD MAKE NO SENSE OBVIOUSLY.

THERE IS NO QUESTION HERE, THAT, OR IS THERE, THAT YOUR CLIENT SENT A CHANGE OF ADDRESS IN DECEMBER.

NO, SIR. NO, MA'AM. EXCUSE ME. THERE IS NO QUESTION.

SO THE GLITCH IN THE STATUTE IS REALLY A GLITCH CONCERNING THE CLERK OR THE TAX COLLECTOR, WHO I ASSUME THE NOTICE WAS SENT TO.

YES, MA'AM.

AND IS THERE ANY REQUIREMENT THAT THE TAX COLLECTOR, THEN, PROMPTLY UPDATE THEIR RECORDS TO REFLECT ANY KIND OF NEW ADDRESS?

JUSTICE QUINCE, WE HAVE NOT ARGUED TO BE FRANK, THAT WE ARE ENTITLED TO RELY SOLELY ON THE LETTER, BECAUSE OF CASE LAW, WHICH HAS, WHERE THERE WAS ANOTHER LETTER AND

ANOTHER CASE AND COURTS HAVE SAID JUST SENDING THE LETTER IS NOT NECESSARILY ENOUGH. BUT IN, CERTAINLY THE LETTER IS ONE MORE FACT IN THIS CASE, AND AS MR. HARGROVE JUST POINTED OUT TO ME, ONE OTHER ADDITIONAL FACT THAT I HAVEN'T MENTIONED IS THIS COMPANY DIDN'T PAY ITS TAX TEST FOR 1997. IT PAID ITS TAX -- ITS TAXES FOR 1997. IT PAID ITS TAXES IN 1996, THROUGH AN ERROR DIDN'T PAY THEM IN 1997. DID PAY THEM IN '97. THEY HAVE PAID ALL THE TAXES -- DID PAY THEM IN '98. THEY HAVE PAID ALL THE TAXES. THIS ISN'T ONE OF THOSE SITUATIONS WHERE SOMEBODY STOPS PAYING TAXES AND DISAPPEARS. THIS IS A COMPANY WHICH CHANGED ITS ADDRESS, DID EVERYTHING IT COULD TO LET THEM KNOW THAT THE ADDRESS HAD BEEN CHANGED, AND SIMPLY GOT CAUGHT BY A GLITCH IN THE STATUTE, AND THE OVERRIDING RULES THAT APPLY.

BUT YOU KNOW, I AM STILL CONCERNED HERE, WITH WHAT THE CLERK DID WRONG, BECAUSE THE STATUTE SAYS THAT THE CLERK IS SUPPOSED TO SEND THE NOTICE, PURSUANT TO THE STATEMENT FROM THE TAX COLLECTOR, AND AS I UNDERSTAND IT, IN THE DISTRICT COURT'S OPINION, THEY TALK ABOUT THE CHANGE IN THE STATUTE FROM THE POINT WHERE THE CLERK WAS SUPPOSED TO SEND THE NOTICE AND NO NOTICE HAD BEEN SENT, SO WHAT HAPPENED IN THE CHANGE OF THE STATUTE? THAT CHANGE MEANT NOTHING?

WE CERTAINLY DON'T SAY THAT THE CHANGE MEANT NOTHING. WHAT WE DO SAY IS THAT THE OVER AVERAGING RULE FOR THIS WHOLE -- THE OVER RAMPBING -- THE OVER ARCHING RULE FOR THIS WHOLE PROCESS IS DUE PROCESS, THAT THE PROPERTY OWNER IS ENTITLED TO ACTUAL NOTICE OR AS BEST THE STATE CAN DO TO GIVE ACTUAL NOTICE, AND THE LEGISLATURE WROTE A STATUTE SAYING, YOU HAVE TO SEND IT TO THE ADDRESS ON THE LATEST TAX ROLL. HERE IT WAS SENT ON A SUPERSEDED TAX ROLL, AN OLD TAX ROLL, RATHER THAN THE LATEST TAX ROLL.

DOESN'T THE FIRST DISTRICT MISSTATE THE HOLDING IN DAWSON, DAWSON, WHEN THEY SAY, AND THIS IS REALLY GOING TO BE A QUESTION FOR MR. GRAESSLE AS WELL, THE KEY ISSUE IS WHETHER THE CLERK FOLLOWED THE PROPER PROCEDURES, NOT WHETHER NOTICE WAS ACTUALLY RECEIVED, BECAUSE THAT IS REALLY TAKEN OUT OF CONTEXT FROM DAWSON, WHERE THERE WAS A SECOND NOTICE THAT DAWSON WAS DEALING WITH, WHICH WAS, HAD GOTTEN ACTUAL NOTICE FIRST TIME, AND THEN THERE WAS A SHERIFF'S REQUIREMENT.

DAWSON GOES OFF ON THE SHERIFFS NOTICE REQUIREMENT AND I DON'T THINK THE FIRST DISTRICT DISTRICT GOT IT ABSOLUTELY CORRECT, IN ITS ANALYSIS OF DAWSON.

AGAIN, IF THE PROCEDURES AS IS SET FORTH, DON'T ENSURE REASONABLY ACTUAL NOTICE, THEN UNDER MENNONITE, THE STATUTE IS UNCONSTITUTIONAL.

ABSOLUTELY, AND THAT IS WHAT WE SAY, THAT WE THINK THAT THE THE DISSENT BY JUDGE IRVIN AND THE MAJORITY, THE OPINION BY THE FOURTH DISTRICT COURT OF APPEAL, COME TO A VERY REASONABLE CONSTRUCTION OF THESE STATUTES, WHICH IS ARE YOU HAVE GOT TO SEND IT TO THE LATEST, THE ADDRESS ON THE LATEST TAX ROLL, AND IF THE LATEST TAX ROLL HAS SUPERSEDED THE TAX ROLL THAT YOU ARE BASING IT ON, YOU JUST GOT TO GET AN UPDATE. OTHERWISE IT HAS GOT TO BE UNCONSTITUTIONAL AS APPLIED, THAN IS WHAT THE TRIAL COURT DID IN THE BARON CASE, THE TRIAL COURT FOUND THAT IF YOU DIDN'T CONSTRUE THE STATUTE IN THAT WAY, IT CERTAINLY WOULD BE UNCONSTITUTIONALATH AS APPLIED AND IT WOULD VIOLATE MENNONITE, BECAUSE THAT IS THE OVERRIDING RULE THAT THIS COURT HAS ADOPTED, ALSO, IN DAWSON. WE SUGGEST IT HAS GOT TO BE REVERSED, AND THE NOTICE GIVEN WAS INVALID. THEREFORE THE TAX DEED IS INVALID. THEREFORE DELTA OWNS THE PROPERTY. THERE MAY BE OTHER LITTLE QUESTIONS TO SORT OUT, WHICH WILL REQUIRE IT TO BE REMANDED TO THE TRIAL COURT, BUT DELTA OWNS THE PROPERTY AS A MATTER OF LAW, BECAUSE THE TAX DEED IS INVALID, BECAUSE PROPER NOTICE WAS NOT GIVEN. THANK YOU.

THANK YOU.

IF I HAVE ANY TIME, I RESERVE IT FOR REBUTTAL. DO I HAVE ANY TIME?

CHIEF JUSTICE: INNINGS. GOOD MORNING.

GOOD MORNING, MR. CHIEF JUSTICE AND MEMBERS OF THE COURT IF IT PLEASE THE COURT, I AM BILL GRAESSLE FROM JACKSONVILLE AND I REPRESENT THE RESPONDENT. THE PETITIONER REMINDS ME OF THE STORY OF THE YOUNG CHILD WHO MURDERS HIS PARENTS THEN ASKS THE JUDGE WHO HAVE MERCY ON HIM BECAUSE IS HE AN ORPHAN THIS. CASE IS A CONSEQUENCE OF LAW BECAUSE THE PROPERTY OWNERS FAILED TO PAY THEIR PROPERTY TAXES.

TO LOOK AT ALL OF THE EQUITIES HERE, IS MR. BERANEK CORRECT THAT THEY FAILED AND MAYBE THROUGH OVERSIGHT, WHICH, TO NOT PAY ONE YEAR'S TAXES?

THIS RECORD SHOWS THAT THEY FAILED TO PAY THEIR TAXES IN 1987. THE TAX CERTIFICATE WAS ISSUED IN THE FOLLOWING YEAR, UNFADE FOR -- UNPAID FOR TWO YEARS. IT WAS THERE FOR SUBJECT --

WE DON'T KNOW IF THEY CONTINUED TO PAY IN 1988 OR '89?

NO.

HOW MUCH WERE THE TAXES?

I APOLOGIZE, YOUR HONOR. I ASSUME THAT SOMEWHERE IN THE TRIAL COURT RECORD THAT EXISTS. IT IS NOT IN THE ORDER GRANTING SUMMARY JUDGMENT AND IT IS NOT IN THE FIRST DISTRICT'S PIN WHY NOT BECAUSE IT DOESN'T MATTER.

HOW MUCH IS THIS -- DISTRICT PICKION, BECAUSE IT DOES NOT -- DISTRICT'S OPINION, BECAUSE IT DOES NOT MATTER.

HOW MUCH IS THE PROPERTY WORTH?

IT DOESN'T MATTER.

WHEN SOMEONE IS CERTAIN TO ENSURE ACTUAL NOTICE AS A MINIMUM CONSTITUTIONAL REQUIREMENT, THEN WE KNOW AND HERE THEY GAVE THEIR NOTICE AND IT WAS SENT AND RETURNED UNDELIVERABLE.

YOUR HONOR, YOU HAVE GOT ABOUT FOUR STATEMENTS IN THERE THAT WE NEED TO CLARIFY, BECAUSE NUMBER ONE, THERE IS NO DUE PROCESS ISSUE HERE. SECONDLY, LET'S GO TO THE SOURCE OF THE QUESTION. MENNONITE INVOLVED A STATUTE BY THE STATE OF INDIANA, WHERE THE MORTGAGE GEE OF THE REAL PROPERTY ONLY RECEIVED CONSTRUCTIVE NOTICE BY PUBLICATION MUCH THE UNITED STATES SUPREME COURT SAID TO CLEAR THIS, THIS IS CLEARLY A VIOLATION OF DUE PROCESS RIGHTS BECAUSE YOU HAVE A IBTES ARE IN THIS PROPERTY -- AN INTEREST IN THIS PROPERTY, AND YOU ARE ENTITLED TO RECEIVE NOTICE UNDER SOME SCHEME AND THAT IS THE CRUCIAL QUESTION, UNDER SOME SCHEME WHICH IS MORE LIKELY TO GIVE YOU ACTUALLY NOTICE.

I AM QUOTING FROM THE OPINION. NOTICE BY MAIL OR OTHER MEANS AS CERTAIN TO ENSURE ACTUAL NOTICE.

THAT DOESN'T MEAN THAT YOU ACTUALLY HAVE TO PROVE THAT YOU HAVE RECEIVED NOTICE. WHAT IT MEANS IS THAT THE STATE STATUTE WHICH GIVES NOTICE AND COVERS A TAX DEED SALE, HAS TO HAVE A PROVISION THAT ALLOWS MOST REASONABLE --

AND HOW IS IT WHERE THERE IS NO TIME LIMIT ON WHEN A SALE TAX PLACE, AND THE TAX ROLL COULD BE, HAVE BEEN UPDATED TWO OR THREE DIFFERENT TIMES, THAT A CLERK WOULD BE ENTITLED TO RELY ON AN OLD TAX ROLL? HOW WOULD CONSTRUING THE STATUTE IN THAT WAY, BE DESIGNED TO ENSURE ACTUAL NOTICE?

OKAY. LET ME START AT THE BEGINNING. THE BEGINNING POINT IS SECTION 197.332. ALL LANDOWNERS ARE KNOWN, ARE HELD TO KNOW THAT THEIR TAXES ARE DUE AND OWING. THEY ARE HELD TO KNOW WHEN THEY DON'T GET A TAX NOTICE. THEY ARE HELD TO -- HELD TO KNOW IF THEY DON'T GET A COMPLETE NOTICE OR ONLY PAY A PORTION OF THEIR TAXES. THE TAXES IN MENNONITE WAS SPECIFICALLY ADDRESSED BY THIS COURT ELEVEN YEARS AGO, IN THE DAWSON CASE. FOOTNOTE ONE ANSWERS THE QUESTION YOU ASKED OPPOSING COUNSEL. IT IS NOT INDICATED WHETHER THE OWNERS ACTUALLY RECEIVED NOTICE BECAUSE THE NOTICE WAS NOT MAILED TO THEIR PRESENT RESIDENCE. HOWEVER SECTION 522.1-D, SPECIFICALLY PROVIDES THE, QUOTE, FAILURE OF ANYONE TO RECEIVE NOTICE AS PROVIDED HERE IN SHALL NOT AFFECT THE VALIDITY OF THE TAX DEED ISSUED PURSUANT TO THE NOTICE. THUS, THE RELEVANT --

WAIT A MINUTE. HOW DOES THAT SQUARE, HOWEVER, WITH OTHER LANGUAGE IN DAWSON, WHICH TALKS ABOUT THE FACT THAT, EVEN THOUGH A PROPERTY OWNER IS ON NOTICE, THAT THEY KNOW THAT THEY DID NOT PAY THEIR TAXES. THAT DOES NOT ALLEVIATE THE BURDEN FROM THE GOVERNMENT, WHEN YOU ARE GETTING READY TO TAKE THEIR PROPERTY, OR PAYMENT OF, NONPAYMENT OF TAXES, OF GIVING THE PERSON NOTICE --

YES.

-- THAT IS CALCULATED, REASONABLY CALCULATED TO GIVE THEM ACTUAL NOTICE!

RIGHT AND HERE IS HOW IT WORKS IN THIS CONTEXT. THE TAX COLLECTOR TAKES THE INFORMATION PROVIDED BY THE PROPERTY OWNER, AS TO WHERE THEIR ADDRESS S.

IN THIS CASE DIDN'T THE PROPERTY OWNER GIVE THEM A CHANGE OF ADDRESS?

IN THIS CASE, THE, ACCORDING TO THE AFFIDAVITS FILED IN OPPOSITION TO THE MOTIONS FOR SUMMARY JUDGMENT, THE TRIAL COURT BY DELTA, THE PROPERTY OWNER, THEY MOVED IN MARCH OF '99, AND IN DECEMBER, EIGHT MONTHS LATER, THEY FINALLY GOT AROUND TO GIVING THE TAX COLLECTOR THEIR NEW ADDRESS.

WHICH WAS AT LEAST FIVE MONTHS BEFORE THE TAX COLLECTOR SENT THE STATEMENT TO THE CLERK'S OFFICE.

THAT'S CORRECT. AND THE TAX COLLECTOR IS OBLIGATED, WHEN HE PREPARES HIS STATEMENT UNDER THE STATUTE, TO UTILIZE THE INFORMATION CONTAINED ON THE LATEST ASSESSMENT ROLL.

EVEN THOUGH HE MAY HAVE OTHER INFORMATION, HE IS TO STRICTLY ABIDE BY WHAT WAS ON -

ON THE LATEST ASSESSMENT ROLL, AND THIS IS, AND THE IMPORTANT THING THAT HAS NEVER BEEN ADDRESSED AND I THINK IS IMPORTANT, BECAUSE THIS ENTIRE SCHEME HAS A PROVISION THAT ALLOWS SOMEONE WHO BELIEVES THEY ARE AGGRIEVED AND IMPROPERLY SUBJECTED TO AN ERROR BY THE TAX COLLECTOR, UNDER 197.502-4-F, SAYS THE TAX COLLECTOR CAN MAKE PERMISSIBLE BONDS IN SECURING THIS INFORMATION. BUT YOU, THE TAXPAYER ARE, THE ONE WHO IS FUNDAMENTALLY OBLIGATED TO ENSURE THAT YOUR TAXES ARE PAID. THE ENTIRE DISCUSSION AND DISSENT AND THE ENTIRE FOURTH DISTRICT'S DECISION IN THE BARON CASE, INVERTS THAT FUNDAMENTAL PROPOSITION. IT TURNS IT ON ITS HEAD. THE PROCESS THAT IS DUE, OTHER THAN TO PUT SOMETHING IN THE MAIL UNDER MENNONITE, AS RECOGNIZED BY THIS

COURT IN DAWSON, IS THAT WHICH THE LEGISLATURE HAS DETERMINED IS DUE. AND THAT --

SO MENNONITE AND DAWSON, WHICH BASICALLY SAY THAT CONCEPT THAT, EVEN THOUGH THE PROPERTY OWNER KNOWS HE HASN'T PAID HIS TAXES, IT DOESN'T REALLY, THEY ARE STILL ENTITLED TO DUE PROCESS, WHEN YOU ARE GOING TO TAKE THE PROPERTY.

AND THE DUE PROCESS NOTICE OF THE SALE WHERE YOU ARE GOING TO TAKE THE PROPERTY, IS TO MAIL BY CERTIFIED MAIL, AT THE LAST KNOWN ADDRESS AS CONTAINED ON THE LATEST TAX ROLL. THE PROBLEM HERE, IS THAT WE ARE CLAIMING SOME INTERVENTION. CLEARLY, AND I PUT THIS IN MY BRIEF AND I THINK IT IS IMPORTANT, IF WE ARE GOING TO START TALKING ABOUT FAIRNESS ISSUES, THIS PROPERTY OWNER WAITED EIGHT MONTHS AFTER IT MOVED, TO TELL THE TAX COLLECTOR THAT WE HAVE MOVED. HAD THEY DONE IT IN A TIMELY MANNER, THE MOST RECENT TAX ASSESSMENT ROLL WHICH WAS USED BY THE COLLECTOR IN PREPARING THE LIST TO GIVE TO THE CLERK HERE, WOULD HAVE CONTAINED THEIR MOST RECENT ADDRESS.

BUT CAN WE ALSO ASSUME THAT THE MOST FORWARDING ORDERS GO FOR SIX MONTHS, SO IF HE HAD MOVED AT LEAST FOR THE SIX OF THOSE EIGHT MONTHS, THERE WOULD HAVE BEEN AFFORDING ORDER IN THE MAIL AND IN THIS CASE THE PROPERTY OWNER, DELTA, IN THIS CASE THE TAX DEED DOES NOT HAVE TO BE APPLY FOR AFTER THE TWO YEARS. THAT IS THE EARLIEST IT CAN BE APPLIED FOR, CORRECT?

CORRECT.

SO THE PROPERTY OWNER IN THIS CASE KNOWS THAT IT IS GOING TO HAVE TO PAY INTEREST ON THE TAX CERTIFICATE, UNTIL A TAX DEED IS SOUGHT, CORRECT? THEY CAN EITHER REDEEM IT AND PAY THE INTEREST, OR THEY CAN WAIT UNTIL THE PURCHASER OF THE CERTIFICATE SEEKS TO GET A TAX DEED, IN ORDER TO PAY IT OFF, AND UNTIL THAT HAPPENS, THEY KNOW THAT THEY ARE GOING TO HAVE TO PAY WHATEVER THE INTEREST RATE IS ON THAT TAX CERTIFICATE, CORRECT? THEY CAN SIT BACK AND DO NOTHING BUT AGREE THAT IS, LET'S SAY IT WAS A DEFICIENCY OF \$100 AND IT WAS AT 10 PERCENT INTEREST. THEY CAN SAY I WILL PAY THIS OFF IN THREE YEARS OR FOUR YEARS OR UNTIL THE DEED IS APPLIED, AND UNTIL THEY GET SOME NOTICE THAT THE TAX DEED IS BEING APPLIED FOR, THE ONLY RISK THEY KNOW OF, THEY ARE GOING TO HAVE TO PAY THE TAXES PLUS THE INTEREST THAT IS ACCRUED, IS THAT CORRECT OR INCORRECT SOME.

I DISAGREE. I MEAN, IN TERMS OF THE PROCEDURE, YES, BUT THE FUNDAMENTAL PROPOSITION AT ISSUE UNDER THIS WHOLE DUE PROCESS CLAIM, WHICH I SUBMIT IS A FALSE PREMISE IN THIS CASE, BECAUSE DAWSON RECOGNIZES THAT THE PROCESS THAT IS DUE IS THAT OF PUTTING A NOTICE IN THE MAIL AT THE ADDRESS THAT THE PROPERTY OWNER HAS GIVEN THE TAX COLLECTOR. AS WAS APPOINTED OUT ON ONE OF THE QUESTIONS ON THE INITIAL COLLOQUY, THERE IS ALWAYS GOING TO BE, I THINK JUSTICE WELLS ASKED IT, THERE IS ALWAYS GOING TO BE SOMEBODY WHO APPLIES TO HAVE A TAX DEED ISSUED ON AN UNREDEEMED CERTIFICATE, A DAY BEFORE A NEW TAX ROLL, SO THE QUESTION HERE IS, HAS THE LEGISLATURE BY ALLOWING A CERTIFIED MAILING OF A NOTICE OF SALE AT THE ADDRESS WHICH THE TAX COLLECTOR IS OBLIGATED TO GET FROM THE LATEST ASSESSMENT ROLL, DOES THAT PASS CONSTITUTIONAL MUSTER? THIS COURT RECS ON NYED IN DAWSON, YES, ABSOLUTELY. EVERY OTHER COURT, UNTIL THE DISSENT WAS ADOPTED IN MY CASE BY THE FOURTH, IN THE BARON CASE, UNTIL THAT CASE, NO OTHER COURT HAS ENTERTAINED THIS AND HAS REJECTED IT AND SAID THE FAIRNESS ISSUE IS FOR THE LEGISLATURE TO DETERMINE.

BUT WAS THIS THE LATEST TAX ROLL?

YES.

AT THE TIME THAT THE CLERK SENT THE NOTE IS?

I AM GLAD YOU ASKED THAT. WE DON'T KNOW! THE ASSUMPTION BY JUDGE IRVIN BELOW, IN THE DISSENT IN THIS CASE, SAID WE PRESUME IT WAS DONE BECAUSE IT WAS FILED, IT WAS SUPPOSED TO BE FILED AND CERTIFIED AS OF JULY 1 OF EACH YEAR. THERE IS NOTHING --

IF WE ACCEPT THE PROPOSITION THAT THERE IS A NEW TAX ROLL EVERY JULY 1, THEN WAS THE NOTICE PURSUANT TO THE LATEST TAX ROLL IN THIS CASE?

THE STATUTE SAYS, THE ANSWER TO THAT IS YES, BECAUSE, THE NOTICE THAT IS, I MEAN, THE INFORMATION THAT IS SUPPOSED TO BE BASED ON THE LATEST ASSESSMENT ROLL IS THAT PROVIDED, COMPILED BY THE TAX COLLECTOR AND PROVIDED TO THE CLERK.

SO IF THE CLERK FOR WHATEVER REASON, HAS SOME ACTUAL KNOWLEDGE, THAT SOMEONE'S ADDRESS IS CHANGED, SAY THEY KNEW FOR WHATEVER REASON THAT DELTA PROPERTY PEOPLE HAVE MOVED, THEY STILL WOULD BE OKAY BY SENDING THE NOTICE OUT TO, PURSUANT TO THE STATEMENT, EVEN THOUGH THEY HAVE ACTUAL KNOWLEDGE THAT THAT ADDRESS IS NOT CORRECT.

ACCORDING TO THE STATUTE, THAT IS ACTUALLY CORRECT. ONE OF THE ARGUMENTS THAT WAS MADE, IT IS A GREAT CASE AND A TERRIBLE CASE. ALL OF THESE CASES, ALL OF THESE CASES INVOLVE SOME TAXPAYER WHO, BECAUSE OF CIRCUMSTANCES THAT VARY FROM MENTAL INCOMPETENCE TO GROSS NEGLIGENCE, FORGOT TO PAY THEIR TAXES. EVERY ONE OF THE CASES CITED IN MY BRIEF, RESULTED IN A JUDICIAL DETERMINATION THAT THIS WAS THE LEGAL RESULT MANDATED.

LET ME ASK YOU ANOTHER HYPOTHETICAL. WHAT IF, IN 1999, THE TAX COLLECTOR SENDS THE STATEMENT, BASED ON THE 1998 TAX ROLL AND IN 2005 THE CLERK SENDS OUT A NOTICE, AND IN THE INTERIM, IN 2000, THE PROPERTY OWNER'S ADDRESS HAS CHANGED.

ARE YOU TALKING ABOUT SIX YEARS LATER, EUSTIS?

YES, SO -- JUSTICE?

YES. ACCORDING TO YOUR ARGUMENT, BECAUSE THE TAX COLLECTOR'S STATEMENT WAS BASED ON THE LATEST TAX ROLL AVAILABLE TO THE TAX COLLECTOR, THAT WOULD COMPLY WITH THE STATUTE.

OKAY. THAT IS NOT MY STATEMENT. THAT IS WHAT THE STATUTE SAYS, AND THAT IS WHAT ALL OF THE DECISIONAL LAW SAYS.

ALL RIGHT. SO --

NOW, YOU HAVE JUST POSITED AN EXTREMELY HORRIBLE, GROSSLY NEGLIGENT PERFORMANCE AFTER DUTY, BY A CLERK WHO WAITS, I THINK YOUR EXAMPLE WAS SIX YEARS, TO MAIL OUT A NOTICE OF SALE. I CANNOT IMAGINE THAT HAPPENING IN THE REAL WORLD, BUT I COULD CLEARLY SAY THAT, UNDER THAT CIRCUMSTANCE THAT, IS SO EXTRAORDINARY AS TO NOT BE WITHIN THE REALM OF WHAT IS IMPLICIT --

BUT THAT COMPLIES WITH THE STATUTE.

IT D LITERALLY COMPLIES WITH THE STATUTE, AND THE REASON THE STATUTE HAS ITS OWN SCHEME BLED BUILT IN, ON 197.502.4-F, SAYS IF YOU THINK THERE WAS AN ERROR IN THIS INFORMATION GIVEN TO CLERK, THEN YOU HAVE AN ACTION AGAINST THE TAX COLLECTOR.

THE CLERK KNOWS IN EVERY COUNTY OF THE 67 COUNTIES IN FLORIDA, THAT ON JULY 1, THE

TAX COLLECTOR HAS AN OBLIGATION TO POST A NEW ROLL, RIGHT?

LEGAL OBLIGATION. WHETHER IT HAPPENED IN THIS CASE IS A DISPUTED ISSUE OF FACT.

THERE IS A LEGAL OBLIGATION TO DO THAT. WE ARE HERE ON A MOTION FOR SUMMARY JUDGMENT.

THAT'S CORRECT.

IF THAT WAS DONE AS CONSTITUTIONALLY REQUIRED -- AS STATUTORILY REQUIRED, AND THE CLERK MAILES THE NOTICES OUT AFTER JULY 1, HOW CAN WE SAY THAT THEY HAVE, IN GOOD FAITH, COMPLIED WITH THE STATUTE TO DO THE LATEST ROLL?

BECAUSE THE STATUTE SAYS THE CLERK MAY ONLY MAIL THE NOTICE OF SALE TO THE ADDRESS PROVIDED BY THE TAX COLLECTOR. THE TAX COLLECTOR, YOU ARE ALWAYS GOING TO HAVE THIS PROBLEM. JUSTICE WELLS WAS RIGHT. THIS IS ALWAYS GOING TO BE AN ISSUE. IN THIS CASE --.

IT IS NOT AN ISSUE IF IT IS ON THAT ANNUAL ROLL.

WHAT YOU ARE SAYING IS, IF I AM UNDERSTANDING THE QUESTION, IS DOESN'T THE CLERK HAVE SOME DUTY TO LOOK BEYOND WHAT WAS GIVEN HIM BY THE TAX COLLECTOR, TO KNOW IF THERE WAS A NEW TAX ROLL.

I AM SAYING THE CLERK COULD NOT RELY ON THE TAX ROLL THE YEAR BEFORE, IF THEY MAIL IT OUT AFTER THE ANNUAL TAX ASSESSMENT ROLL IS AVAILABLE.

OKAY. AND THE ANSWER TO THAT IS TWOFOLD. ONE IS, IN THIS CASE, THERE IS NO EVIDENCE WHATSOEVER THAT THAT INFORMATION WAS AVAILABLE TO THE TAX COLLECTOR OR THE CLERK, AS OF JULY 1, SO IF YOU ARE GOING TO MAKE A NEW RULE OF LAW AND SAY THAT THAT IS NOW THE CLERK'S OBLIGATION, THAT IF HE GETS A TAX, THE INFORMATION FROM THE COLLECTOR, AND BEFORE HE SENDS OUT THE NOTICE, THERE IS IN FACT A CERTIFICATION OF A NEW TAX ROLL, THE CLERK THEN HAS TO GET NEW INFORMATION OR DOUBLECHECK THE TAX ROLL. FOOTNOTE, THE FOOTNOTE WITH AN ASTERISK IN THE DISTRICT COURT'S OPINION BELOW, DISCUSSES THE LEGISLATIVE HISTORY HERE. AND TALKS ABOUT THE FACT THAT, PRIOR TO THE 1985 AMENDMENTS, THE CLERK HAD AN OBLIGATION AFTER HE GOT THE TAX COLLECTOR'S STATEMENT, TO THEN GO AND LOOK AT OTHER PUBLIC RECORDS, INCLUDING THE MOST RECENT TAX ROLL, TO VERIFY THAT HE HAD CORRECT ADDRESSES, AND IN 1985, THAT CHANGE WAS MADE, AND THE DISSENT BY JUSTICE, JUDGE IRVIN IN THIS CASE, AND THE FOURTH DISTRICT'S DECISION IN THE BAR -- BARON VERSUS RHETT CASE, GUTS THE 1995 ET CETERA. THE QUESTION HERE IS -- -- THE 1995 AMENDMENT. THE QUESTION HERE IS --

THEY ARE NOT ADVOCATING THAT THE CLERK'S OFFICE HAS TO GO AND SEARCH FOR THIS, BUT THE CLERK'S OFFICE REALLY HAS TO ASK THE TAX COLLECTOR FOR ANY UPDATED INFORMATION. ISN'T THAT REALLY WHAT THEY ARE ASKING FOR?

I AM SORRY. DELTA'S ARGUMENT HAS BEEN, AND IT HAS BEEN IN THE DISTRICT COURT IN HERE AS WELL AS AT THE TRIAL COURT, THAT THE CLERK HAD A DUTY TO USE THE INFORMATION CONTAINED ON THE 2000 TAX ROLL, AND THAT IS NOT WHAT THE STATUTE SAYS, AND, AGAIN, IF YOU ARE GOING TO ANNOUNCE A NEW RULE OF LAW AND SAY THAT THE CLERK DOES HAVE THAT DUTY, THEN WE NEED AN EVIDENTIARY HEARING ON WHETHER, IN FACT, THAT WAS DONE HERE IN THIS CASE.

THAT MIGHT BE THE CASE, BUT I THINK TO ME, YOU ARE READING WHAT THE FOOTNOTE, WITH THE ASTERISK, IS, BEFORE THE STATUTE CHANGE, THE CLERK WAS REQUIRED TO SEARCH ALL

SORTS OF RECORDS.

EXACTLY.

NOW WE ARE ONLY,, ALL, YOU SAY IT IS A BIG THING WE ARE TALKING ABOUT, SOMEHOW IN TERMS OF ALL OF THE ISSUES, IT SEEMS LIKE A RELATIVELY SMALL DIFFERENCE THAT MAKES A BIG DIFFERENCE TO THE PROPERTY OWNER, IS WHETHER THE LATEST ROLL MEANS THE LATEST ROLL AT THE TIME THAT THE CLERK SENDS OUT THE NOTICE. AND YOU KNOW, THE IDEA THAT THAT IS A RIDICULOUS READING OF THE TWO STATUTES TOGETHER, IS WHAT I AM HAVING PROBLEMS WITH, AND SO I COULDN'T BE WHAT -- THAT COULDN'T BE WHAT THE LEGISLATURE INTENDED. THEY COULDN'T CARE IF THE CLERK WAITED ADD YEAR AND THE TAX, EVERYONE -- WAITED A YEAR AND THE TAX, EVERYONE KNOWS THE CHANGES. THE TAX THAT THEY RELIED ON A TAX COLLECTOR'S STATEMENT IS ENOUGH FOR THE CLERK TO COMPLY WITH THE --

THAT IS THE QUESTION, THAT NOTHING ABOUT THE LACK, WELL, IT SAYS IT IN-LAWS DAUS ONE, THAT FAILURE TO -- IN DAWSON, THAT FAILURE TO RECEIVE NOTICE IS NOT A FAILURE OF THE VALIDITY OF THE TAX STATUTE.

FOR SOME REASON THAT THEY SENT IT TO DELTA AT THE CORRECT ADDRESS THAT WAS LISTED IN THE 2000 TAX ROLL --

THAT IS NOT WHAT IT SAYS.

-- THEN THE FACT THAT YOU DO NOT GET THE NOTICE DOES NOT MEAN TO ME THAT YOU HAVE A DUE PROCESS VIOLATION, BUT THE ISSUE TO ME IS WHETHER THE STATUTE, AS CONSTRUED BY THE FIRST DISTRICT, IS A STATUTE THAT IS REASONABLY CALCULATED TO ENSURE ACTUAL NOTICE!

AND THAT QUESTION IS TWOFOLD. ONE, IT HAS BEEN ANSWERED BY THIS COURT IN DAWSON, WHICH SAID THAT THE MANDATORY FOR DUE PROCESS REASONS, FOR DUE PROCESS CONSIDERSSS, THE MANDATORY -- CONSIDERATIONS, THE MANDATORY NOTICE IS MAILED AT THE ADDRESS CONTAINED ON THE INFORMATION GIVEN BY THE TAX COLLECTOR.

ALL WE ARE DISCUSSING HERE, THEN, IS WHETHER THAT TAX COLLECTOR STATEMENT IS THE MOST RECENT STATEMENT!

NO. THE TAX COLLECTOR STATEMENT, WHEN COMPILED IN THIS CASE, CONTAINED THE OLD ADDRESS, BECAUSE IT WAS COMPILED BASED ON THE 1999 ASSESSMENT ROLL. THE SECOND QUESTION AND THE MORE FUNDAMENTAL ONE, JUSTICE PARIENTE, IS WHOSE ARENA DOES THIS FALL IN, UNDER THE SEPARATION OF POWERS ISSUE. EVERY COURT THAT HAS ADDRESSED THIS, HAS RECOGNIZED THAT, ONCE THAT MINIMUM DUE PROCESS RIGHT TO RECEIVE NOTICE BY MAIL HAS BEEN INCORPORATED INTO THE STATUTE, THEN IT IS A QUESTION FOR THE LEGISLATURE.

WE HAVE GOT --

ISN'T THAT A FUNDAMENTAL QUESTION, THOUGH, IS WHETHER THE MINIMUM DUE PROCESS HAS BEEN AFFORDED, BECAUSE THERE IS THE CHANGE, WITH REGARD TO THE ADDRESS, AND WHETHER THIS IS THE MEANS AFFORDED TO EFFECTUATE THAT NOTICE. ISN'T THAT REALLY WHERE IT COMES DOWN?

THAT IS WHAT THEIR ARGUMENT IS.

WHY DOES IT NOT COME DOWN THERE?

IT DOESN'T COME DOWN THERE, BECAUSE THE LEGISLATURE, WELL, BACK UP, AGAIN, WE HAVE

ALREADY BEEN DOWN THIS ROAD WITH DAWSON THAT SAYS THAT THAT NOTICE IS OKAY. EVERY CASE THAT I HAVE CITED IN MY BRIEF, INVOLVES, NOT EVERY CASE, MOST OF THE CASES INVOLVE SOME CHANGE OF ADDRESS CLAIM. I DIDN'T GET THE NOTICE. IT WAS SENT TO THE WRONG ADDRESS. IF YOU WOULD HAVE LOOKED AT A DEED, YOU WOULD HAVE SEEN THAT MY ADDRESS WAS SUCH-AND-SUCH. IT IS ALL THAT SAME TYPE OF ARGUMENT, AND THEN IN DAWSON THIS COURT ANALYZED THE HISTORICAL PROBLEMS THE JUDICIARY HAD IN ENFORCING THE VALIDITY OF TAX DEEDS AND UNDERTOOK A VERY THOROUGH ANALYSIS AND SAID MENNONITE ONLY HOLDS THAT YOU CAN'T JUST GIVE CONSTRUCTIVE NOTICE, WHEN YOU ARE GOING TO EXTINGUISH SOMEBODY'S PROPERTY RIGHT. IT HOLDS THAT AT LEAST PUTTING SOMETHING IN THE MAIL IS CONSTITUTIONALLY REQUIRED. HERE, WHOSE OBLIGATION WAS IT?

WITH ALL DUE RESPECT, THE HOLDING, THE STATEMENT IN MENNONITE, IS NOTICE BY MAIL AS IS REASONABLY CERTAIN TO ENSURE ACTUAL NOTICE.

OKAY.

HOW IS THAT, THAT IT JUST DOESN'T MATTER? WHAT IF THE CLERK DIDN'T PUT ENOUGH STAMPS ON IT AND IT COMES BACK?

YOU CAN SHOW AN INFIRMITY THEN.

-THE CLERK DIDN'T STAMP IT?

IT WOULD SHOW THAT THEY DIDN'T PUT ENOUGH POSTAGE.

THEY PUT IT IN THE MAIL WITHOUT ENOUGH POSTAGE.

IF YOU DIDN'T PUT ENOUGH POSTAGE, THE UNITED STATES MAIL IS NOT GOING TO TRY TO DELIVER IT, NOT AS IN THIS CASE HAPPENED, IT IS INSUFFICIENT POSTAGE. THAT, TO ME, IS AN EASY ONE.

LET ME GET BACK TO INTERPRETING THE STATUTE. THE WAY I READ 197.502.1, THE PHRASE I THINK AT ISSUE IS THE NOTICE MAY ONLY BE MAILED TO THE ADDRESS OF THE LEGAL TITLE HOLER AS IT APPEARS ON THE LATEST ASSESSMENT ROLL. THAT PHRASE DOESN'T SAY ANYTHING ABOUT WHETHER IT IS THE TAX COLLECTOR'S DUTY OR THE CLERK'S DUTY, BUT IT DOES SAY THE NOTICE MAY ONLY BE MAILED, AND THAT SEEMS TO IMPLY IT IS THE CLERK'S DUTY, SO WHY ISN'T JUST A SIMPLE ISSUE OF STATUTORY INTERPRETATION, THE CLERK IS RESPONSIBLE FOR MAILING IT, TO THE LEGAL TITLEHOLDER AS IT APPEARS ON THE LATEST ASSESSMENT ROLL, PERIOD.

OKAY. BECAUSE YOU HAVE LEFT OUT THE PREFATORY LANGUAGE, BEGINNING AT SECTION 4. THE TAX COLLECTOR SHALL DELIVER TO THE CLERK OF THE CIRCUIT COURT A STATEMENT, STATING THAT THE FOLLOWING PERSONS ARE TO BE NOTIFIED, PRIOR TO THE SALE OF THE PROPERTY, AND THEN WE GET TO A, WHICH IS WHAT YOU HAVE JUST READ. THE TAX COLLECTOR IS TO PROVIDE THAT INFORMATION TO THE CLERK.

IT DOESN'T SAY -- OKAY. GO AHEAD. THE PHRASE THAT I READ DOESN'T SAY ANYTHING ABOUT THE TAX COLLECTOR. IT IS JUST A PASSIVE VOICE.

IT SAYS THAT THE TAX COLLECTOR SHALL DELIVER TO THE CLERK, A STATEMENT STATING THAT THE FOLLOWING PERSONS ARE TO BE NOTIFIED PRIOR TO THE SALE, AND THEN WE GO TO THE SECTION YOU READ. 197.522.1.A SAYS THE CLERK OF THE CIRCUIT COURT SHALL NOTIFY BY CERTIFIED MAIL, THE PERSONS LISTED IN THE TAX COLLECTOR STATEMENT, PURSUANT TO 197.052 -- 502, 4, WHICH IS WHAT YOU AND I HAVE BEEN TALKINGS ABOUT, THEN A TAX COLLECTOR STATEMENT IS MADE. UP TO THIS POINT WHAT IT HAS SAID IS THE CLERK IS TO MAIL NOTICE AT

THAT ADDRESS GIVEN BY THE TAX COLLECTOR. AND AGAIN, WHOSE RESPONSIBILITY IS IT TO ENSURE THAT THEY RECEIVED A TAX NOTICE AND PAID IT?

CHIEF JUSTICE: WITH OUR HELP, WE HAVE CONSUMED YOUR TIME. WE ESPECIALLY APPRECIATE YOUR RESPONSE. OBVIOUSLY WE HAD A LOT OF QUESTIONS AND CONCERNS.

THANK YOU VERY MUCH. AM I OUT OF TIME?

CHIEF JUSTICE: MR. BERANEK, WOULD YOU REPLY TO THE LAST QUESTION THAT IS POSED BY YOUR OPPOSITION. WHAT RULE ARE WE NOW TO CONSTRUCT OUT OF THIS, IN TERMS OF WHO HAS THE OBLIGATION TO DO WHAT IN THESE VARIOUS SITUATIONS?

I THINK THE BASIC RULE IS THE RULE FROM MENNONITE AND DAWSON, WHICH JUSTICE PARIENTE HAS READ A NUMBER OF TIMES, WHICH IS NOTICE BY MAIL OR OTHER MEANS AS CERTAIN TO ENSURE ACTUAL NOTICE IS A MINIMUM CONSTITUTIONAL PRECONDITION. AND THE LANGUAGE GOES ON TO SAY, IF ITS NAME AND ADDRESS ARE REASONABLY ASCERTAINABLE.

DO WE HAVE TO DECIDE THIS CASE ON DUE PROCESS GROUNDS OR CAN WE DECIDE IT ON STATUTORY INTERPRETATION?

THAT IS THE RULE OF LAW THAT THIS COURT MUST FOLLOW, AND IF, IN FACT, WHAT HAS OCCURRED HERE IS THAT THE LEGISLATURE HAS CREATED A SYSTEM WHEREBY WE HAVE TWO CONSTITUTIONAL OFFICIALS, A TAX COLLECTOR AND A CLERK OF THE CIRCUIT COURT, STANDING BACK POINTING FINGERS, SAYING THAT WAS YOUR JOB OR YOUR JOB, AND AS RESULT OF THIS CONTROVERSY, PROPERTY OWNERS ARE NOT RECEIVING ACTUAL NOTICE THAT THEIR PROPERTY IS BEING SOLD FOR ONE YEAR BACK TAXES, THEN YOU DO NEED TO DECIDE IT ON DUE PROCESS GROUNDS. BUT --

DO YOU TAKE ISSUE WITH THE WAY I WAS INTERPRETING THE STATUTE WITH YOUR OPPOSING COUNSEL?

NO, I DON'T, NO, I DON'T AT ALL!

CAN WE SIMPLY SAY THAT 197.502.1.A REQUIRES THAT THE NOTICE MAY ONLY BE MAILED TO THE ADDRESS OF THE LEGAL TITLEHOLDER AS IT APPEARS ON THE TAX ROLL AND THE CLERK IS THE ONE THAT DOES THE MAILING. ANOTHER CLERK IS THE ONE THAT DOES THE MAILING.

SPEAKING TO THE OBLIGATIONS, REALLY, OF THE TAX COLLECTOR, AS OPPOSED TO THE LATER ROLE OF THE CLERK, AND SO THAT IS WHY I AM ASKING, AGAIN, WHAT RULE IS GOING TO COME OUT OF THIS, IN TERMS OF SAYING, IN OTHER WORDS, ARE WE NOW GOING TO SAY THAT THE TAX, THAT THE CLERK, NOW, BEFORE MAILING ANY OF THESE NOTICES OUT, HAS AN OBLIGATION TO DO THAT?

-- TO DO WHAT? SO WE ARE REALLY TALKING ABOUT SOMETHING, HERE, NOW, THAT IS GOING TO HAVE AN IMPACT IN CLERK'S OFFICES AROUND THE STATE OF FLORIDA, IF WE ADOPT YOUR PROPOSITION, SO I WOULD LIKE TO KNOW JUST EXACTLY WHAT IT IS. THAT IS, IN OTHER WORDS, WHERE, THAT THIS DECISION, NOW, IS GOING TO SAY THAT, IN ADDITION TO THE STATUTE AS IT IS WRITTEN RIGHT NOW, THAT THE CLERK HAS THE OBLIGATION, BEFORE MAILING OUT THESE NOTICES, TO DO THUS AND SO. YOU ARE GETTING LOTS OF HELP FROM YOUR COLLEAGUE. IT IS A GOOD THING YOU BROUGHT HIM.

JUDGE, WE THINK THAT THE TWO STATUTES, IF YOU CONSTRUE THEM TOGETHER, ANSWER THE QUESTION. THE NOTICE HAS GOT TO BE MAILED TO THE ADDRESS ON THE MOST, THE LATEST ASSESSMENT ROLL.

SO THE RULE IS GOING TO BE, THEN, THAT THE CLERK, BEFORE MAILING OUT THE NOTICE, HAS AN OBLIGATION TO GO BACK TO THE TAX COLLECTOR AND SAY ARE YOU SURE THAT THIS IS THE LATEST AND CURRENT ADDRESS THAT YOU HAVE IN YOUR RECORDS, AND SO, AND THAT EVEN THOUGH, IN THE, IN 99 PERCENT OF THE CASES, WHEN THE CLERK IS MAILING THIS OUT, THERE CAN BE SOME ASSURANCE STATISTICALLY, THAT PROBABLY HE HAS GOT THE CURRENT ADDRESS, THAT THE CLERK HAS TO DO THAT WITH ALL OF THESE. IS THAT CORRECT? AND IF HE DOESN'T DO IT, AND IT DOESN'T GO TO THE LATEST ADDRESS, THAT THE TAX SALE WILL BE SET ASIDE.

JUSTICE ANSTEAD, I DON'T THINK THE COURT WOULD NEED TO GO THAT FAR.

OKAY, WELL --

BECAUSE ALL THE CLERK HAS TO DO IS MAIL THE NOTICE, WITHIN A REASONABLE TIME OF GETTING THE STATEMENT FROM THE TAX COLLECTOR, SO LONG AS HE DOES IT BEFORE A NEW TAX ROLL COMES OUT.

SO THE NEW RULE WILL BE THAT THERE WILL BE THIS TIME LIMITATION THEN.

SO LONG AS --

WHAT WOULD BE, WHAT WOULD BE THE TIME LIMITATION WOULD BE SO LONG AS IT IS MAILED OUT BEFORE THERE IS A NEW TAXING DATE? JULY 1.

A NEW TAX ROLL, YES, SIR.

SO THAT WOULD BE THE RULE. ISN'T THAT A STRANGE RULE, THOUGH, TO COME OUT OF A CASE LIKE THIS?

WELL, I MEAN, THE REASON WHY IT BECOMES NECESSARY TO GRAPPLE WITH IF, IS BECAUSE HERE -- WITH IT, BECAUSE HERE THE CLERK WAITED THREE MONTHS AND A NEW ROLL CAME OUT IN THE MEANTIME.

I GUESS WHAT I AM STRUGGLING WITH, IS AS OPPOSED TO AN INDIVIDUAL SITUATION, WHERE SOMEBODY IS MAKING A CLAIM, HEY, I DID EVERYTHING THAT I COULD, I WENT DOWN TO THE TAX COLLECTOR'S OFFICE, AND IN THREE INCH BOLD LETTERS, GAVE THEM YOU KNOW, MY NEW ADDRESS AND SAID I AM DOING THIS, BECAUSE NEXT YEAR, YOU ARE GONNA SEND OUT THE CLERK, AND I WANT TO BE SURE, AND HE HAD THE TAX COLLECTOR SIGN OFF. YOU ARE GOING TO BE ALL RIGHT. THAT IS THE INDIVIDUAL CASE, AS OPPOSED TO WHETHER OR NOT WE ARE TALKING ABOUT, REALLY, CHANGING THE STATUTORY SCHEME THAT IS OUT THERE, TO ADD SOMETHING NOW, TO THE DUTIES OF THE CLERKS AROUND THE STATE OF FLORIDA. IS THAT WHAT, AND WHICH ARE WE TALKING ABOUT? ADDRESSING THE INDIVIDUAL GRIEVANCE THAT APPEARS TO BE A MISCARRIAGE OF JUSTICE, BE IT WHATEVER YOU WANTED, OR ARE WE NOW GOING TO ADOPT AND, REALLY, SORT OF MODIFY WHAT THE LEGISLATIVE SCHEME NOW PROVIDES, BY EXPLICITLY PROVIDING THESE ADDITIONAL DUTIES ON THE CLERK? WHICH? WHICH WOULD YOU HAVE US DO?

JUDGE, I WOULD ASK FOR A SMALL, A SMALL CASE T DOESN'T HAVE TO BE THE MAJOR CASE WHICH ESTABLISHES A -- CASE. IT DOESN'T HAVE TO BE THE MAJOR CASE WHICH ESTABLISHES A WHOLE LOT OF NEW RULES THIS. IS A INDIVIDUAL MISS KARBLING OF SUS-- MISCARRIAGE OF JUSTICE, WHERE DUE PROCESS HAS BEEN VIOLATED. ALL WE HAVE BEEN LOOKING FOR ON BEHALF OF OUR CLIENT IS TITLE TO THIS PROPERTY, WHICH ONLY REQUIRES THE COURT TO DETERMINE THAT THIS FORFEITURE WHICH SHOULD BE SUBJECTED TO HEIGHTENED SCRUTINY, VIOLATED DUE PROCESS, AND AS JUSTICE CANTERO HAS SAID MR. CHIEF JUSTICE

I AM AFRAID WE HAVE GONE OVER, JUST AS I WENT A COUPLE OF MINUTES WITH YOUR

OPPONENT HERE, WE HAVE GONE OVER T AGAIN, WE APPRECIATE BOTH OF YOU, ALL THREE OF YOU, RESPONDING TO OUR INQUIRIES. IT IS AN IMPORTANT CASE, OBVIOUSLY. THANK YOU SO MUCH. THE COURT WILL STAND IN RECESS, NOW, UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.