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**Kenneth Friedman, M.D. v. Heart Institute of Port St. Lucie, Inc.**

NEXT CASE ON THE COURT'S DOCUMENT IS FRIEDMAN VERSUS HEART INSTITUTE OF PORT ST. LUCIE.

GOOD MORNING.

GOOD MORNING, YOUR HONOR. PLEASE THE COURT, MY NAME IS DAVID BB HELFREY, ATTORNEY FOR DOCTOR FRIEDMAN. THIS CASE RAISES SIGNIFICANT LEGAL AND CONSTITUTIONAL ISSUES CONCERNING UNIFORM FRAUDULENT TRANSFER ACT. YESTERDAY, THIS COURT DOCKETED OR HAD FILED A REFERRAL FROM THE 11TH CIRCUIT COURT OF APPEALS, THE QUESTION OF COURSE GUIDANCE ON ISSUES REGARDING THE PROPER INTERPRETATION OF FUFTA. CONFLICTING GUIDANCE OF DISTRICT COURTS OF APPEAL ON NATURE OF FUFTA AND REMEDIES MADE IT DIFFICULT TO PREDICT HOW FLORIDA COURTS WOULD RULE IN APPLYING FUFTA IN THAT PARTICULAR CASE.

WHAT ARE YOU READING FROM? I AM NOT AWARE OF ANYTHING BEING FILED.

IT WOULD HAVE BEEN THE FRIEDMAN CASE THAT WAS, WE LOOKED ON YOUR DOCKET YESTERDAY. AND OBSERVED THAT IT WAS FILED YESTERDAY, THE FRIEDMAN CASE. IT WAS DOCKETED ON SUPREME COURT'S DOCKET SHEET AS OF YESTERDAY A REFERRAL BY THAT COURT.

THIS SAME PLAINTIFF?

NO, YOUR HONOR. I HAVE GOT DIFFERENT FREEDMAN, F-R-E-E-D-M-A-N.

ARE YOU SAYING THERE IS A DIFFERENT RECENT CIRCUIT CASE?

CERTIFIED TO THIS COURT FOR RESOLUTION INTERPRETING FUFTA THAT THE STATE OF THE LAW IS SO UNCERTAIN THEY'RE UNABLE TO PREDICT HOW THE 11TH CIRCUIT OUGHT TO APPLY THAT. UNDER THE BANKRUPTCY LAW BUT DIDN'T UNDERSTAND HOW TO APPLY FLORIDA FUFTA CLAIMS. U.S. SUPREME COURT HAS RULED IN THE GRUPA CASE THAT BEFORE --.

BEFORE YOU GO FURTHER BECAUSE YOU HAVE OBVIOUSLY PIQUED OUR INTEREST, WHAT, VERY BRIEFLY, WHAT WERE THE FACTUAL, WHAT'S THE FACTUAL SETTING?

IN THAT CASE.

11TH CIRCUIT CASE.

AS I UNDERSTAND IT, IN THAT CASE, THE CLAIM IS WHETHER AN AIDER AND ABETTOR TO A VIOLATION OF THE FLORIDA FUFTA STATUTE, WHETHER THAT INDIVIDUAL COULD BE HELD LIABLE U.S. SUPREME COURT IN THE GRUPA CASE THIS WE RESPECTFULLY SUGGEST IS MORE TRUE WHEN IT IS THE AFFAIRS OF THIRD PARTY.

LET'S START WITH, ARE WE DEALING WITH STATUTORY CONSTRUCTION QUESTION HERE?

WE ARE DEALING, IN EFFECT WE ARE DEALING WITH STATUTORY CONSTRUCTION. I SUPPOSE IN THE BIG PICTURE. IN THE SPECIFIC ISSUE IN THIS CASE IS WHETHER A MOTION FOR STAY AND

WHAT ARE THE STANDARDS THAT OUGHT TO BE APPLIED BY A CIRCUIT COURT.

SO YOU AGREE THAT THE, EVEN THOUGH IT HASN'T BEEN REDUCED TO JUDGMENT, THAT UNDER THE STATUTE, THAT THEY, THAT THE DEFENDANT, OR THE PLAINTIFF WOULD PROBABLY BE -- PROPERLY BE CONSIDERED A CLAIMANT?

THAT IS CERTAINLY HOW THE STATUTE READS. AND THAT IS HOW IT HAS BEEN INTERPRETED TO THIS POINT.

SO THEREFORE, IF, THEN WHERE IS THE CONSTITUTIONAL? YOU MENTIONED THERE IS BIG CONSTITUTIONAL.

I'M GOING -- THE CONSTITUTIONAL ISSUES THAT I SEE ARISING ARE THE RIGHT TO PRIVACY AND THE FUFTA STATUTE AND EXPANSIVENESS INTO GETTING INTO PRE-JUDGMENT CLAIMS. RAISES THE RIGHT OF PRIVACY BECAUSE OF DISCOVERY THAT IS NECESSARY THAT GOES HAND IN HAND AND ALSO RAISES CERTAIN DUE PROCESS RIGHTS.

WE ARE TALKING ABOUT HERE WHETHER THERE SHOULD BE AN ABSOLUTE RULE THAT THERE IS A MOTION TO STAY AND THE REASON ADVANCED WAS JUDICIAL ECONOMY, NOT ISSUES ABOUT THE SCOPE OF DISCOVERY. THAT'S SORT OF A SEPARATE ISSUE, IF YOU DON'T STATE THEN YOU LOOK AND SAY WELL MAYBE THE DISCOVERY SHOULD BE NOT LIKE IN PUNITIVE DAMAGE ISSUES, NOT AS BROAD AS IN, YOU KNOW, UNTIL CERTAIN THINGS ARE ESTABLISHED. I MEAN IN OTHER WORDS, ISN'T THAT BEYOND REALLY WHAT WE'RE HERE FOR TO TALK ABOUT, BECAUSE THEY'RE MENTIONING JUDICIAL ECONOMY AND THEREFORE THERE SHOULD BE AN ABSOLUTE RULE THAT EITHER STAY OR NOT STAY. AND I THOUGHT WE'RE HERE TO SAY MAYBE THERE SHOULD BE DISCRETION, THERE IS NO REASON TO HAVE AN ABSOLUTE RULE TO STAY THIS.

CERTAINLY. AND THAT IN FACT IS OUR ARGUMENT. WE'RE TAKING THE POSITION THAT THE MOTION FOR STAY GIVES THE TRIAL COURT AN OPPORTUNITY TO IN EFFECT DO A REALITY CHECK TO DETERMINE WHETHER THE CASE SHOULD PROCEED FORWARD OR NOT. THE WELL DEVELOPED LAW AND THE RIGHT OF PRIVACY IN RELATION TO THE DISCOVERY RULES AND PROCEDURES AND WHAT WILL BE ALLOWED TO BE DISCOVERED TELLS YOU HOW THE CASE SHOULD PROCEED, WHAT WE ARE SUGGESTING IS WHETHER IT SHOULD.

ONCE YOU GET PAST THE POINT, IF I UNDERSTAND, THAT YOU'RE BEING CANDID WITH THE COURT, AND CONCEDING THAT WHAT WE HAVE HERE, THAT THERE IS A VERY BROAD DEFINITION OF CLAIM UNDER THE DEFINITION OF CREDITOR AND THE OTHER DEFINITIONS IN THE STATUTE, AND WHY WOULDN'T THIS ALL THEN AFTER THAT SIMPLY COME UNDER THE UMBRELLA OF THE BROAD DISCRETION AFFORDED TO TRIAL COURTS IN DETERMINING STAYS AND BALANCING ALL OF THESE CONCERNS THAT YOU'RE TALKING ABOUT, ISN'T THAT REALLY WHAT THE FOURTH DISTRICT HAS DONE HERE?

WELL I THINK THE -- I AGREE WITH THE COURT. I THINK THE ISSUE --.

IT THEN BECOMES SIMPLY AN ISSUE OF THE TRIAL COURT EXERCISING DISCRETION LISTENING TO THE CONCERNS EXPRESSED BY BOTH SIDES. AND THEN MAKING SOME DETERMINATION. IF YOU HAVE A WHOLE BUNCH OF PEOPLE THAT MAYBE ARE GOING TO LOSE THEIR PENSIONS BECAUSE ENRON IS GOING INTO BANKRUPTCY OR SOMETHING, THEY HAVEN'T BEEN ABLE TO GET JUDGMENTS YET ON THEIR CLAIMS, BUT THEY SAY IF YOU DON'T FREEZE THE ASSETS OR HOLD THEM THERE, THAT WE WILL NEVER GET ANYTHING, THAT MIGHT BE ONE SITUATION. THEN IF YOU HAVE SOMETHING ELSEWHERE THE CAUSE OF ACTION MAY BE ONE THAT'S VERY DIFFICULT TO PROVE OR THAT THE DAMAGES WOULD BE VERY SPECULATIVE OR SOMETHING, THE COURT, TRIAL COURT MAY HAVE A DIFFERENT VIEW AS, OR THE SUCCESS, YOU KNOW, THE PERCENTAGES OF SUCCESS ON THE MERITS OF ALL THESE FACTORS. DOESN'T IT -- ONCE WE GET PAST THE DEFINITIONAL PARTS HERE AND AGREEMENT THAT THE STATUTE IS WRITTEN VERY BROADLY,

DOESN'T IT ALL JUST COME DOWN TO THAT?

I ACTUALLY AGREE WITH THE COURT. THE DIFFICULT POSITION WE FIND OURSELVES IN IS THAT I THINK THERE HAVE BEEN TWO PER SE RULES ESTABLISHED. ONE BY THE THIRD DISTRICT SAYING THAT STAY CONSIDERS JUDICIAL ECONOMY AND THEREFORE IT SOUNDS AS IF IT IS AUTOMATIC. AND THE THIRD DISTRICT, OR THE FOURTH DISTRICT, I'M SORRY, DISTRICT COURT SAYING THAT YOU CAN'T, THE TRIAL COURT CAN'T EXERCISE REMEDIES AVAILABLE UNDER THE STATUTE, THEREFORE STAY IS NOT APPROPRIATE. THAT SOUNDS LIKE ANOTHER PER SE RULE TO ME. AND SO WHAT WE ARE REALLY ARGUING IS THAT THE MOTION FOR STAY IS A DISCRETIONARY MATTER INVESTED IN THE TRIAL COURT. AND THAT THE TRIAL COURT NEEDS TO BALANCE THESE VARIOUS INTEREST. I SEE THE CASE LAW STATE AT THIS POINT, ONE SAYING JUDICIAL ECONOMY, THAT TRUMPS EVERYTHING, OTHER IS SAYING THE REMEDIES TRUMPS EVERYTHING, THEREFORE NO DISCRETION IS AVAILABLE.

THE FINAL SENTENCE IN THE FOURTH DCA OPINION SAYS WE THEREFORE CONCLUDE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE STAY. IN DENYING CERT. SEEMS TO ME THOUGH THEY TALK ABOUT WHAT YOU HAVE MENTIONED THE CONCLUDING SENTENCE IS THE COURT DIDN'T ABUSE ITS DISCRETION.

THAT'S CERTAINLY HOW THE COURT PHRASED IT. BUT THE ONLY FACTOR THAT THEY MAKE ANY REFERENCE TO, WHICH IS A FACTOR THAT WASN'T DISCUSSED IN THE, BY THE CIRCUIT COURT, OR IN THE HEARING BEFORE THE CIRCUIT COURT EITHER, IS THIS CONCEPT OF THE REMEDIES WOULDN'T BE AVAILABLE. THAT CONCEPT SOUNDS TO ME LIKE GUIDANCE BY THE APPELLATE COURT TO TELL THE TRIAL COURT THIS IS THE PREEMINENT, IF NOT THE ONLY.

BUT EVEN IF WE ACCEPT YOUR ARGUMENT HERE, YOU DON'T REALLY GET ANY RELIEF BECAUSE THE TRIAL JUDGE DID EXACTLY WHAT YOU'RE SAYING A TRIAL JUDGE SHOULD DO, DIDN'T IT? ISN'T THE TRIAL JUDGE IN FACT LISTEN TO YOUR ARGUMENT ABOUT WHY THERE SHOULD BE A STAY IN THIS PARTICULAR CASE AND EXERCISE ITS DISCRETION NOT TO ENTER THE STAY?

THAT'S THE PROBLEM AS I SEE IN THIS CASE, IS NO MATTER WHICH WAY YOU LOOK AT IT,,

THE TRIAL COURT CERTAINLY EXERCISES DISCRETION AND DID IT BASED UPON ARGUMENT OF COUNSEL BY BOTH SIDES. WHEN WE APPEAL THAT RULING, IT SEEMS TO ME THE STANDARDS AS TO HOW THAT DISCRETION, THE EXERCISE OF THAT DISCRETION SHOULD BE JUDGED DON'T EXIST. NO ONE, ANY OF THE CASES EVEN IN NOT FUFTA CASES HAVE BEEN ABLE TO FIND ANY APPELLATE COURT OR SUPREME COURT DECISION THAT TELLS US WHAT ARE THE FACTORS THAT GOES INTO THIS CONCEPT. CERTAINLY DISCRETION IS NEVER UNBRIDLED, HAS TO HAVE SOME STRUCTURE, SOME FACTORS OR PARAMETERS.

ISN'T DISCRETION NORMALLY BASED ON WHAT THE FACTORS ARE, THE FACTS OF EACH PARTICULAR SITUATION WOULD DETERMINE WHETHER OR NOT THE TRIAL JUDGE IN FACT EXERCISED DISCRETION OR ABUSED THE DISCRETION?

NO QUESTION. BUT FOR EXAMPLE, WHAT IF, WHAT IF DOCTOR FRIEDMAN IN THIS CASE IS WILLING TO POST BOND, HAS ASSETS SUFFICIENT TO PAY \$300,000 IN PLAY HERE? WHAT IF HE CAN PAY MONEY INTO THE COURT? NONE OF THAT IS DEALT WITH. IT WASN'T RAISED FRANKLY ON THE RECORD BELOW EITHER. ARE THERE LESS INTRUSIVE MECHANISMS OF ACCOMPLISHING THIS?

THE KIND OF ARGUMENT, YOU'RE CONCEDED HOWEVER THAT NO ARGUMENT TO THAT EFFECT WAS MADE TO THE TRIAL COURT AND SAID IF YOU'RE NOT GOING -- I MEAN YOU CAN STAY THIS BECAUSE WE ARE WILLING TO DO XYZ, WAS IT?

IT WAS NOT ARGUED, I HAVE TO CONCEDE THAT. I THINK IT WAS ARGUED THOUGH THAT THIS WAS BASICALLY NOT BROUGHT IN GOOD FAITH. IT WAS BROUGHT A YEAR AND A HALF AFTER

THE INITIAL LAWSUIT, YEAR AND A HALF AFTER THE INDIVIDUAL WAS GIVEN NOTICE OF TERMINATION. AND CONCERNING THE TRANSACTION THAT OCCURRED BEFORE.

WE CAN'T MAKE THAT KIND OF DECISION. WE DON'T KNOW WHEN HE EVEN FOUND OUT ABOUT THE TRANSFER OF THE MONEY TO THE GIRLFRIEND OR ANYTHING LIKE THAT. SO I MEAN, THAT'S SOMETHING THAT THE TRIAL JUDGE WOULD ACTUALLY HAVE TO LOOK AT TO MAKE THOSE KIND OF DECISIONS, ISN'T IT?

YES, YES INDEED.

SO YOU'RE JUST LOOKING FOR A LAUNDRY LIST REALLY.

THAT IS ALL WE ARE LOOKING FOR IS A LAW DRY LIST THAT WILL PROVIDE GUIDANCE TO BOTH APPELLATE COURTS IN EXERCISING REVIEW OF THE DISCRETION OF THE TRIAL COURT. AND FOR THE BENEFIT OF THE TRIAL COURTS AS WELL. ABSOLUTELY.

THANK YOU.

HAS THERE BEEN ANY DISCOVERY ON THE FRAUDULENT TRANSFER ACT?

DISCOVERY HAS BEEN STAYED. THE DISCOVERY REQUESTED THOUGH INCLUDES OF COURSE ALL TRANSACTIONS FOR X NUMBER OF YEARS, OVER \$250 ARE WHICH IN OUR JUDGMENT WOULD PICK UP SPECIAL DINNERS, PICK UP RENT. WOULD PICK UP ALL SORTS OF THINGS. HER TAX RETURNS, THIRD PARTY TRANSFER TAX RETURNS, ANY COMMUNICATIONS HAD WITH DOCTOR FREEDMAN'S LAWYERS.

ARE YOU FILED MOTIONS FOR PROTECTIVE ORDERS?

THE JUDGE ACTUALLY RULED THAT THAT IS PERMISSIBLE AS WE UNDERSTAND IT. AND THAT WILL BE THE SUBJECT I SUSPECT OF A DIFFERENT APPEAL.

SO REGARDLESS OF HOW WE RULE ON THE FRAUDULENT TRANSFER ACT CLAIM AND WHETHER IT CAN BE STAYED OR NOT, YOU STILL HAVE A REMEDY WHEN, IF YOU ASSERT THERE ARE CERTAIN DISCOVERY UNDER THE ACT, THAT IS INTRUSIVE AND VIOLATES YOUR CLIENT'S RIGHT TO PRIVACY?

I THINK ONCE THE DECISION IS MADE THAT THE CASE IS BROUGHT IN GOOD FAITH, AND I THINK THAT'S ONE OF THE ELEMENTS THAT SHOULD BE BALANCED IN THE COURT'S DISCRETION, THEN IF THE DECISION IS MADE TO DENY THE MOTION FOR STAY, YES, THERE IS WELL DEVELOPED LINES OF CASES IN FLORIDA DEALING WITH DISCOVERY AND BALANCING THAT DISCOVERY AGAINST THE CONSTITUTIONAL RIGHT TO PRIVACY WHAT ISN'T HAPPENING AND I DON'T SEE REFERENCE TO IN ANY OPINIONS, IS THE CONCERN ABOUT THE INTRUSIVENESS OF FUFTA, JUST THE MERE FILING OF IT. MERE ALLEGATIONS. IF YOU'RE GOING TO BE ALLOWED TO MAKE DISCOVERY, THEN OF COURSE YOU'RE GOING TO AUTOMATICALLY GET INTO AREAS PROTECTED BY THE RIGHT OF PRIVACY BUT HAVE TO BE BALANCED AGAINST THE STATE'S RIGHT TO FAIR AND EXPEDITION RESOLUTION OF THE CASE.

I AM TRYING TO UNDERSTAND, WHY WOULD THERE BE REFERENCE TO IT IN THIS OPINION IF YOU WERE TO ALREADY SETTLED THAT ISSUE, WHICH IS THAT THE PRIVACY INVASION, THE SCOPE OF THE DISCOVERY WASN'T RAISED AS SOMETHING IN THE TRIAL COURT? I MEAN I GUESS MY CONCERN IS YOU'RE ASKING US TO GIVE A LAUNDRY LIST OF WHAT SHOULD BE CONSIDERED AND YOU'RE GIVING US ALL THESE HYPOTHETICALS THAT ON THIS RECORD, WHAT BASIS DO WE HAVE TO EVEN GIVE WHAT THE LAUNDRY LIST SHOULD BE?

WELL I THINK THAT IS ONE OF THE PROBLEMS. WE HAVE SUGGESTED IN OUR BRIEF VARIOUS

FACTORS THAT OUGHT TO BE CONSIDERED. BUT I DON'T THINK THE DISTRICT COURTS OR THE CIRCUIT COURTS HAVE ANY GUIDANCE FROM THIS COURT OR THE APPELLATE COURT AS TO WHAT THIS LAUNDRY LIST OUGHT TO BE AND IN OUR MIND, IT IS TIME TO BRING THE PARTICULARLY IN AN AREA OF A FUFTA CLAIM WHICH IS SO INTRUSIVE AND SUBJECT TO ABUSE AS GRUPA COURT SAID. WE NEED THIS KIND OF GUYS DANCE FROM THE COURT. WE HAVE MADE SUGGESTIONS TO THE COURT WHAT THESE FACTORS OUGHT TO BE. CERTAINLY WE ARE NOT PRETENDING WE KNOW WHAT ALL FACTORS OUGHT TO BE. WE THINK WE HAVE A RIGHT. YES THE TRIAL COURT EXERCISED DISCRETION, WE THINK WE HAVE A RIGHT TO HAVE THAT DISCRETION ANALYZED FOR ABUSE BY THE DISTRICT COURT. WHICH AS WE SEAT DIDN'T OCCUR SINCE BOTH OF THEM SEEM TO GET POLAR OPPOSITES AND FOCUS ON WOULD BE FACTOR ONLY TO REACH A DECISION IN AFFIRMING THE TRIAL COURT. IN THE ROSEN CASE ACTUALLY REVERSED THE TRIAL COURT, FINDING IT WAS A WASTE OF JUDICIAL RESOURCE.

YOU'RE SAYING JUDICIAL ECONOMY SHOULD NOT BE, WHETHER IT IS OR ISN'T THE ONLY FACTOR THAT SHOULD BE CONSIDERED?

THAT'S RIGHT. OUR VIEW IS THAT IS ONE FACTOR OBVIOUSLY SHOULD BE CONSIDERED. A IT IS A FAIR FACTOR. THE LACK OF REMEDIES FOR THE CREDITORS THAT MIGHT, IF WE STAY IT, SHOULD BE A FACTOR. BUT WE DON'T BELIEVE THOSE SHOULD BE THE ONLY FACTORS. AND THAT IS ESSENTIALLY WHAT WE ARE ARGUING.

THE MARSHAL HAS REMINDED US YOU'RE IN YOUR REBUTTAL TIME.

THANK YOU YOUR HONOR.

THANK YOU.

MAY IT PLEASE THE COURT, ANDREW HALL FOR HEART INSTITUTE OF PORT ST. LUCIE. THERE WAS A NARROW ISSUE PRESENTED TO THE FOURTH DISTRICT. THE NARROW ISSUE IS VERY SIMPLE. THAT IS WHETHER OR NOT UNDER THE UNIFORM FRAUDULENT TRANSFER ACT HAVING FILED THAT CLAIM WITH THE CLAIM ON THE LAWSUIT ITSELF IS THERE TO BE AN AUTOMATIC STAY? THE FOURTH DISTRICT SAID THERE IS NO AUTOMATIC STAY UNDER THESE CIRCUMSTANCES. COUNSEL ARGUED TO THE FOURTH DISTRICT AND ARGUED IN HIS BRIEF AND I THINK STILL ARGUES TO SOME DEGREE THAT WE HAVE TO BE CONCERNED ABOUT THE CIRCUIT COURT'S ABILITY TO GET PAST THE AUTOMATIC STAY RULE AND DECIDE ROUTINE DISCOVERY QUESTIONS. AND I DON'T THINK WE HAVE TO BE CONCERNED ABOUT THAT AT ALL.

DO YOU ALSO, ONE THING AS I WAS THINKING ABOUT HOW THIS PLAYS OUT, YOU FILED -- IT'S BEEN FILED IN THE SAME ACTION IN THIS CASE?

YES, YOUR HONOR IT HAS.

TISSUE AS TO WHETHER THERE SHOULD BE SEVERANCE, WHETHER THE SAME JURY WOULD HEAR THINGS THAT COULD BE INFLAMMATORY, THOSE ARE ALL I WOULD PRESUME GOVERNED BY NORMAL RULES OF PROCEDURE.

THEY ABSOLUTELY ARE.

SO YOU'RE NOT SAYING IT WOULD HAVE TO BE TRIED AT THE SAME TIME EVEN?

NO, THERE ARE LOTS OF ALTERNATIVES THAT ARE AVAILABLE TO THE TRIAL JUDGE TO DEAL WITH THE PROCEDURAL QUESTIONS THAT MIGHT COME UP OVER TIME.

IS THERE REALLY ANY DISPUTE LEFT BETWEEN YOU ALL HERE AFTER THIS ORAL ARGUMENT?

THERE WASN'T A DISPUTE BEFORE THE ORAL ARGUMENT. THAT'S MY PROBLEM. I MEAN, YOU I WAS GETTING READY TO COME UP HEAR, I READ COUNSEL'S BRIEF AND MY BRIEF, I'M TRYING TO FIGURE OUT, EXCUSE THE EXPRESSION, WHERE IS THE BEEF BECAUSE I CAN'T FIGURE OUT WHY I'M HERE. REASON I SAY THAT BECAUSE THE CENTRAL ISSUE THAT COUNSEL ARGUES, THE PRIVACY QUESTION, WHICH IS I GUESS WHAT HE WAS CONCERNED ABOUT, IS ALWAYS AVAILABLE TO THIS LITIGANT AND ALL LITIGANTS TO BE RAISED IN SPECIFIC ISSUES AS THEY COME UP IN THE DISCOVERY PROCESS. NOW THIS COURT HAS WRITTEN ON THE BALANCING TESTIMONY OF PRIVACY IN CONNECTION WITH CIVIL LITIGATION ON A NUMBER OF OCCASIONS. THIS IS NOT A NEW SUBJECT FOR THE COURT. THERE ARE NOT NEW STANDARDS. WE DON'T HAVE TO MAKE NEW GROUND. WE ALWAYS TALK ABOUT THE RELATIVE ISSUE OF WHAT'S NECESSARY FOR THE LAWSUIT RELATIVE TO THE ARTICLE I, SECTION 21 FLORIDA CONSTITUTIONAL PRIVACY ISSUE.

HAS YOUR OPPONENT CONCEDED TOO MUCH? S HE CONCEDED TOO MUCH, THAT IS THAT SOMEBODY CAN FILE ANY KIND OF A SPECULATIVE LAWSUIT OF SOME KIND BASED ON SOME WILD NEW THEORY THAT CREATIVE LAWYERS HAVE COME UP WITH AND THEN GO AND UNDER THE INTERPRETATION OF THE LANGUAGE OF THIS STATUTE THAT'S BEEN RENDERED SO FAR, GO AND HAVE ALL OF THESE ASSETS STAYED AND SEIZED? NOW GET A FOCUS ON WOW, YOU KNOW, LOOK AT WHAT'S GOING ON OVER HERE AND THE FOCUS IS TAKEN OFF OF WHETHER OR NOT THERE REALLY IS A, WHETHER THIS PERSON REALLY IS A CREDITOR, WHATEVER, HAS HE CONCEDED TOO MUCH HERE?

CONCEDING TOO MUCH, I THINK WHAT HE IS DOING, HE IS INVENTING IN A SENSE, A SENSE OF PARANOIA ABOUT A CASE THAT DOESN'T EXIST HERE.

DON'T WE STILL HAVE THE ISSUE -- I'M GETTING A LITTLE OFF FOCUS MYSELF. ISN'T THE ISSUE HERE REALLY I GUESS, I THOUGHT THE ISSUE WAS ONE COURT, ONE DISTRICT COURT OF APPEAL IS SAYING UNDER THESE KIND OF CIRCUMSTANCES, YOU MUST ENTER A STAY.

RIGHT.

WHEN YOU HAVE THIS DEPENDENT FUFTA CLAIM, AND THIS COURT, THIS CASE THE COURT IS SAYING NO YOU DON'T ISSUE A STAY. SO IS THERE REALLY A CONFLICT HERE ON WHAT THESE DISTRICT COURTS OF APPEAL HAVE SAID?

I DIDN'T THINK SO. LET ME EXPLAIN WHY I DIDN'T THINK SO. WHEN YOU READ THE STATUTE AND READ THE REMEDIES IN THE STATUTE, ONE OF THE THINGS WE HAVE TO REMEMBER IS THE FLORIDA LEGISLATURE FOLLOWING THE UNIFORM ACT AS IT COMES TO US HAS RECOGNIZED THE FACT THAT A CREDITOR AS DEFINED IN THE ACT, INCLUDING AN UNLIQUIDATED POTENTIALLY IMMATURE OLD CREDITOR IS A VERY BROAD DEFINITION, HAS THE RIGHT TO GO TO COURT AND SAY WAIT A MINUTE, THERE ARE BAD THINGS HAPPENING HERE WITH RESPECT TO THE FRAUDULENT TRANSFER OF ASSETS. STOP THAT. AND WE WANT A HEARING ON THAT. LET'S JUST DEVELOP WHAT HAPPENS THERE. I THINK THIS IS THE ANSWER TO EVERYTHING. IN THAT EVENT YOU HAVE TO HAVE A HEARING. YOU GO FORWARD AND ASK FOR AND THE STATUTE SAYS A RECEIVER TO TAKE CHARGE OF THE ASSETS TO BE TRANSFERRED OR ALTERNATIVELY A INJUNCTION. THAT'S SPECIFIC INTERIM STATUTORY REMEDY CONTEMPLATED. WELL WE DEAL WITH THAT, WE KNOW UNDER THE RULES OF CIVIL PROCEDURE IN ORDER TO GET AN INJUNCTION, ONE OF THE THINGS THAT YOU HAVE TO PROVE IS THE CLEAR LIKELIHOOD OF SUCCESS ON THE MERITS. THAT'S A STANDARD THAT'S BEEN AROUND FOREVER. NOW IF I HAVE TO PROVE CLEAR LIKELIHOOD OF SUCCESS ON THE MERITS IN THE CONTEXT OF THIS STATUTE, IT WOULD SEEM TO ME THAT I HAVE TWO ISSUES I HAVE TO ADDRESS. I HAVE TO ADDRESS NOT ONLY THE CLEAR LIKELIHOOD OF SUCCESS ON THE MERITS ON THE FRAUDULENT TRANSFER BUT I ALSO HAVE TO ESTABLISH A CLEAR LIKELIHOOD OF SUCCESS WITH REGARD TO MY CLAIM IN CHIEF TO ESTABLISH THAT IT IS PROBABLE. THAT I AM INDEED A CREDITOR. IT IS NOT UNUSUAL

PHENOMENON THAT WE GET THIS, GO OVER TO BANKRUPTCY SIDE TO USE THAT ILLUSTRATION, IN BANKRUPTCY COURTS THERE ARE ESTIMATING OF CONTINGENT CREDITOR CLAIMS, DO WE ALLOW YOU TO VOTE, HOW MUCH IS YOUR CLAIM WORTH? COURTS ARE WELL EXPERIENCED IN DEALING WITH THESE THINGS.

WELL ARE THEY? THAT IS, DON'T WE ORDINARILY HAVE, FIRST YOU GOT TO GO OUT THERE AND PROVE YOUR CLAIM AND GET A JURY OR A JUDGE TO AGREE WITH YOU AND NOW YOU GET A JUDGMENT.

RIGHT.

NOW WE START TALKING ABOUT WHETHER YOU CAN DO SOMETHING ABOUT SEIZING SOMEBODY'S --.

THAT WOULD BE TRUE EXCEPT IT CONTEMPLATES INTERIM RELIEF. WHAT WE HAVE TO REMEMBER, HERE IS WHAT THE ACT IS DESIGNED TO DO. THE ACT IS DESIGNED TO NOT MAKE YOU VULNERABLE, TRANSFER AFTER TRANSFER SO YOU ARE AN ENDLESS CHASE FOR ASSET. ACT IS EXPRESSLY DESIGNED TO DO THAT. NOW THE QUESTION THEN FOR THIS COURT IT SEEMS TO ME IS IF WE HAVE AN AUTOMATIC STAY, AUTOMATICALLY IN THERE, DO WE JUDICIALLY NULLIFY THAT PART OF THE STATUTE THAT SAYS THERE IS THIS RIGHT TO INTERIM RELIEF?

NO CONSTITUTIONAL ISSUES RAISED IN THIS CASE BELOW? IS THAT CORRECT? NONE AT THE TRIAL COURT LEVEL?

NO.

NO ATTEMPT AT THE SECOND DISTRICT?

COUNSEL ARGUED, LET ME IN FAIRNESS, HE USED THE WORD PRIVACY IN HIS ARGUMENT. THAT WORD CAME UP. THE TRANSCRIPT CLEARLY REFLECTS IT. BUT THERE WAS NO DEMONSTRATION WHATSOEVER. COUNSEL MADE NO EFFORT TO DEMONSTRATE EXACTLY WHAT PRIVACY RIGHTS WOULD BE LOST AND HOW THE BALANCING TESTIMONY WOULD BE ADVERSELY AFFECTED, ETCETERA. SO WHAT I AM REALLY COMING DOWN TO IS THE FOLLOWING ISSUE. ONE ON THE DISCOVERY QUESTION, TO RESPOND TO JUSTICE CANTERO'S COMMENTS, IF WE GET INTO A PRIVACY QUESTION ON THE DISCOVERY ISSUE, THERE IS A HEARING AND THERE WILL BE A NECESSITY AT LEAST UPON OUR PART FOR THE INFORMATION TO SHOW THAT IT IS REASONABLY RELATED TO THE LITIGATION. IF COUNSEL SAYS THAT THE CASE IS SO WEAK AS TO BE VIRTUALLY HOPELESS, THAT'S ONE OF THOSE FACTORS THIS JUDGE IS GOING TO TAKE INTO CONSIDERATION. AND IS POTENTIALLY REVEALED BY CERTIORARI. THAT IS NUMBER ONE.

IS YOUR CONTENTION TRIAL COURT CAN NEVER ENTER A STAY OR THAT THE TRIAL COURT HAS THE DISCRETION IN PARTICULAR CIRCUMSTANCES TO ENTER A STAY BUT IS NOT REQUIRED TO DO SO?

ALWAYS DISCRETION, YOUR HONOR. ALWAYS DISCRETION. ALWAYS ON A ABUSIVE DISCRETION STANDARD. IF WE LOOK TO ROSEN, WHICH IS EXACTLY WHERE THE CONFLICT COMES, WE CAN UNDERSTAND THE DISCRETION BECAUSE REMEMBER, IN ROSEN ONE, BY WAS THE FIRST LAWSUIT ON THE MERITS, THAT CASE WAS SUBJECT TO A STAY BECAUSE OF THE INSOLVENCY OF AN INSURANCE CARRIER. NOW THERE IS A SPECIFIC STATUTORY SCHEME THAT COMES INTO PLAY WHENEVER INSURANCE CARRIER FAILS. ONE, ALL CASES THAT INVOLVE THAT CARRIER DIRECTLY OR INDIRECTLY ARE STAYED FOR PERIOD AT LEAST SIX MONTHS AND STAY CAN BE RENEWED. NOW THAT GIVES THE INSOLVENT INSURANCE CARRIER OPPORTUNITY TO COME OUT AND FIGURE OUT WHAT'S GOING ON AND RESOLVE A WHOLE LOT OF CASES. SO WHEN THE COURT PUTS A STAY IN THAT CONTEXT IN ROSEN TWO, WHAT THEY'RE REALLY SAYING I WOULD SUGGEST, WAY I AM READING IT, IN ORDER FOR IT TO MAKE SENSE IS WE HAVE A PROCESS THAT WE WANT TO WALK

THROUGH. THAT PROCESS IS LET'S LET FIGA COME IN, WE ARE GOING TO PUT A STAY.

ARE YOU SAYING THERE IS NOT REALLY CONFLICT?

IF WE SAY THAT ROSEN ESTABLISHES AN ABSOLUTE RULE, THEN THERE IS A CONFLICT. IF WE TAKE ROSEN ON ITS LITERAL LANGUAGE, WHICH IS ABUSIVE DISCRETION, IT IS REVIEWED ON ABUSE OF DISCRETION AND CONTEXT OF STAY, THERE WOULDN'T BE A CONFLICT. AND THAT'S ONE OF THE POINTS THAT WE TRY TO ADDRESS ON THE JURISDICTIONAL BRIEFS BUT I WAS NOT SUCCESSFUL ON THAT POINT SO I AM NOT GOING TO PURSUE THAT ARGUMENT OTHER THAN TO SAY I HAVE A SERIOUS QUESTION AS TO WHETHER OR NOT THERE TRULY IS A CONFLICT. AND THAT QUESTION I THINK REMAINS. I GUESS WHAT I AM REALLY SAYING TO YOU, FINAL ANALYSIS AND MAYBE THIS IS A RATHER THAN BEAT A DEAD HORSE, THE QUALITY OF OUR CIRCUIT JUDGES IN THIS STATE IS EXCELLENT. AND THEY ARE CERTAINLY HAVE THE SKILL AND ABILITY TO DECIDE THESE QUESTIONS CONSIDERING ALL THE ISSUES THAT COME UP. THE QUESTIONS THAT YOU RAISED MR. CHIEF JUSTICE IN TERMS OF ARE WE DEALING WITH A NOVEL CASE THAT IS EITHER OVER THE LINE OR FRIVOLOUS OR ON THE VERGE OF FRIVOLOUS? OR HAS COUNSEL SAID IS IN REALLY GOOD FAITH? THAT IS WHAT A CIRCUIT JUDGE IS GOING TO LOOK AT AMONG OTHER ISSUES IN DECIDING ALL THE QUESTIONS, WHICH ARE WHERE DOES THE DISCOVERY GO, DO I REALLY WANT THIS PURSUIT TO SAVE TIME, IS THERE A NEED TO PURSUE IT TO SAVE TIME? BECAUSE REMEMBER, UNDER OUR EQUIVALENT 1.26 O TRIAL JUDGE HAS THE RIGHT TO ORDER DISCOVERY IN HIS DISCRETION. AND HE CAN SAY, FOR EXAMPLE, I'M NOT GOING TO GET TO THIS BECAUSE I DON'T FEEL THE NEED TO GET TO THIS UNTIL DOWN THE ROAD. ABSOLUTELY IS RIGHT. SO WHAT THE QUESTION FROM THIS COURT IS, DO WE --.

YOU SAID, NORMALLY IN A CIVIL CASE, ONCE THE CASE IS FILED, THERE IS CONSIDERED TO BE DISCOVERY AS A MATTER OF RIGHT. YOU HAVE MENTIONED RULE 1.260.

I MAY HAVE THE NUMBER WRONG. BUT IT IS,.

BUT THAT PRESUMES DISCOVERY WILL GO FORWARD.

YES BUT THE JUDGE ALSO HAS THE RIGHT TO STOP DISCOVERY, STAY DISCOVERY, ORDER DISCOVERY, DO AN AWFUL LOT OF THINGS.

SO YOU'RE DISTINGUISHING BETWEEN STAYING THE ACTION, I GUESS, AND PUTTING REASONABLE LIMITATIONS ON DISCOVERY?

SURE. IN OTHER WORDS, THE COURT CAN RIGHT OFF THE TOP SAY FOR EXAMPLE, COUNSEL ARE YOU LOOKING FOR AN INJUNCTION? AND IF THE ANSWER IS YES, BE WHAT WE CAN DO, WE CAN HAVE LIMITED DISCOVERY RELATED TO TIN JUNCTION. NOW COUNSEL SAYS, FOR EXAMPLE, IN HIS ARGUMENT WE COULD'VE DONE A LOT OF THINGS. WE COULD'VE POSTED A BOND, PUT THE MONEY THAT WAS TRANSFERRED IN THE REGISTRY OF THE COURT. WE COULD HAVE DONE THESE VARIOUS THINGS. THAT'S RIGHT. HAD THAT OFFER BEEN UNDERTAKEN. HAD THE OFFER BEEN SAY WELL WE WON'T MAKE ANY FURTHER TRANSFER, THEN WE STOP. WE DON'T HAVE TO GO ANY FURTHER FOR INTERIM RELIEF. THEN MAYBE WE DEAL WITH SEVERANCES. SO WHAT I'M TRYING TO SAY IS THE ISSUE FOR THIS COURT IS, DO WE HAVE A RIGID ABSOLUTE RULE WAY COUNSEL IS READING ROSEN, SAYING YOU FILE TO PROTECT AGAINST STATUTE LIMITATION AND THAT'S ALL THAT HAPPENS. IN WHICH EVENT THE INTERIM RELIEF CONTEMPLATED BY THIS STATUTE IS NULLIFIED. OR DO WE SIMPLY ALLOW THIS CASE TO BE GOVERNED LIKE ALL OTHER CASES UNDER THE RULES OF PROCEDURE THAT CURRENTLY EXIST?

COUNSEL, I HAVE A CONCERN WITH YOUR ISSUE WITH REGARD TO THE CASE IN THE THIRD DISTRICT IN ROSEN WAS DECIDED ONLY BECAUSE FIGA WAS INVOLVED. AND I HAVE SOME CONCERN WITH THAT BECAUSE I LOOKED TO THE FINAL CONCLUDING PARAGRAPH OF ROSEN AND IT SAYS THIS RECORD DEMONSTRATES THAT RESOLUTION OF ROSEN ONE IS DISPOSITIVE OF

ROSEN TWO. IF ROSEN DOES NOT PREVAIL IN ROSEN ONE SHE IS NOT A CREDITOR AND THERE IS NO BASIS FOR SETTING ASIDE THE TRANSACTIONS ATTACKED IN ROSEN TWO. A STAY IS A PROPER VEHICLE TO AVOID WASTE OF JUDICIAL RESOURCES. I DON'T READ ROSEN FROM THE THIRD DISTRICT AS TURNING UPON THE FIGA ISSUE AT ALL. SEEMS TO ME THEY'RE SAYING IF YOU DON'T PREVAIL YOU'RE NOT A CREDITOR SO WE ARE GOING TO STAY THIS THING. COULD YOU HELP ME WITH THAT? I DO UNDERSTAND IT WAS FIGA BUT THERE WAS A PUNITIVE DAMAGE CLAIM AS WELL NOT COVERED BY FIGA. SO I'M A LITTLE LOST. I NEED SOME HELP TO UNDERSTAND THAT ARGUMENT.

WELL, THE LAST PARAGRAPH IN ROSEN THAT YOU'RE QUOTING FROM, IN POINT OF FACT HAS SEVERAL POINTS, ONE OF WHICH IS THE ONE YOU RAISE. I AGREE IT'S THERE. IT SEEMS TO SUGGEST THAT YOU WOULD FOLLOW THAT ROUTE IN ORDER, IN ORDER TO AVOID A WASTE OF JUDICIAL ECONOMY. BUT THAT LANGUAGE IN ROSEN MAKES NO REFERENCE WHATSOEVER TO THE STATUTE, UNIFORM FRAUDULENT TRANSFER ACT, FACT IT HAS ENTER RHYME RELIEF INHERENT IN IT, IT WASN'T PRESENTED TO THE COURT AS A QUESTION THAT MIGHT INVOLVE INTERIM RELIEF AND CONSEQUENTLY WASN'T THERE. IT WASN'T SPECIFICALLY ADDRESSED. THAT'S MY FIRST POINT ON THAT. MY SECOND POINT ON THAT, AND THAT'S WHY I GOT INTO THE STAY. THERE IS NO QUESTION THAT WHEN, LIMITING A DISTINCTION. THE MINUTE THE LAW RECOGNIZED THE FACT THAT A CONTINGENT CREDITOR COULD PROCEED UNDER THE STATUTE, INHERENT IN THAT DEFINITION, WE CREATE THE ISSUE. THAT IS TO SAY, BECAUSE, THERE WAS A THINKING AMONG SOME COURTS AT SOME TIME, THAT YOU'D HAVE TO GET YOUR JUDGMENT, THEN YOU'D GET TO FIND OUT WHAT THE ASSETS ARE AND CHASE THEM.

TRADITIONALLY YOU HAD NO ATTACHMENT BEFORE JUDGMENT. THAT COMES FROM THAT COMMON LAW KIND OF THEORY. THIS IS AN ALTERATION.

WHAT I'M SAYING, ONCE WE GET INTO THAT, THEN WHAT WE DO IS WE HAVE TO ALLOW THAT TO WORK. IN ORDER TO ALLOW IT TO WORK, YOU HAVE GOT TO BE ABLE TO STOP THE TRANSFER OF ASSETS. THE CHIEF JUSTICE MADE THE COMMENT IN A WORLD, FOR EXAMPLE, WHERE CORPORATE SCANDALS DO OCCUR, AND IF I'M IN THE MIDDLE OF A CORPORATE SCANDAL AND I KNOW I'M BEING INVESTIGATED, I HAVE A LOT OF MOTIVE TO MAKE A LOST TRANSFERS. IT MAY BE THERE ARE A LOT OF CONTINGENT CREDITORS ADVERSELY AFFECTED IF THEY CAN'T GO IN AND MAKE THE SHOWINGS THEY OUGHT TO HAVE. SO WHAT I'M SAYING TO YOU IS, NUMBER ONE, ROSEN I JUST DON'T THINK IS CONSISTENT WITH THE STATUTE.

WELL AGAIN, I WAS GOING BACK TO THE POINT OF NO CONFLICT. ROSEN SOME ME IS VERY CLEAR, IF NOT EXPRESSLY STATED AT LEAST IMPLYING, YOU MAY NOT BE A CREDITOR. SO WE ARE NOT GOING TO WASTE OUR TIME. WE ARE GOING TO STOP THIS NOW.

I THINK THAT IS A FAIR INTERPRETATION OF ROSEN. I QUANTITY QUARREL WITH THAT. WHAT I AM TRYING TO SAY I GET CONFUSED IN ROSEN BECAUSE THAT PARAGRAPH CONTAINS SEVERAL DIFFERENT THOUGHTS. THEY WORK IN A VARIETY OF DIRECTIONS. I CAN'T QUARREL WITH THE LOGIC. HOW CAN YOU QUARREL WITH THE LOGIC OF SAYING IF YOU DON'T WIN YOUR CASE YOU'RE NOT A CREDITOR. OBVIOUSLY THAT IS LOGIC. BUT THIS STATUTE CONTEMPLATES CONTINGENT CREDITOR HAS THE RIGHT TO PROCEED.

I AM TRYING TO GO TO THE CONFLICT ISSUE. THIS CASE CAN BE DECIDED IN MY VIEW VERY CLEARLY FOR THE PROPOSITION THAT A STAY IS MANDATED BECAUSE THIS REVERSED THE GRANT OF A STAY. SO THAT'S AN ABUSE OF DISCRETION. THEN THE REASONING IS BECAUSE YOU DON'T HAVE YOUR JUDGMENT, AND THAT'S WHAT MY CONCERN IS. BECAUSE WE CAN WALK AWAY FROM THIS AND JUST LEAVE, YOU KNOW, BE AT IT. CONTINUE LITIGATING THIS ISSUE FOR YEARS. IT IS HERE TODAY. SO IF YOU'RE ENCOURAGING US NOT TO TAKE THE CASE, I'M TRYING TO UNDERSTAND WHY.

I THINK IN FAIRNESS I HAVE TO SAY THAT BECAUSE OF THE WAY THE CASE IS READ, THE TWO CASES, THE APPARENT CONFLICT IS THERE. THERE IS NO QUESTION ABOUT IT. I HAVE TO CONCEDE THAT. BUT WHAT I AM SAYING TO YOU IS I DON'T THINK, WHEN I READ FOR ALL SORTS OF REASONS, THE LANGUAGE I AM NOT COMFORTABLE WITH ROSEN, IS BEING A WELL-SETTLED ISSUE CASE THAT ADDRESSES ALL THE ISSUES IN LIGHT OF THE STATUTORY LANGUAGE. MAYBE I SHOULD HAVE TRUST THE RESULT. THANK YOU FOR BRINGING THAT TO MY ATTENTION. THANK YOU VERY MUCH.

THANK YOU.

IF I CONCEDED TOO MUCH, LET ME RETRACT A LITTLE. THE ISSUE IN MY MIND IS FUFTA BY ITS TERMS AUTOMATICALLY INTRUDES INTO THE CONSTITUTIONAL RIGHT OF PRIVACY. IT MAKES CERTAIN THINGS THAT ARE RELEVANT AUTOMATICALLY. WHEN YOU CHALLENGING THAT TRANSFER, AND THEREFORE IT IS NOT A DISCOVERY QUESTION --.

WAS THERE EVER A -- IT SEEMS TO ME WE KEEP GETTING BACK TO THIS PRIVACY ISSUE IN YOUR ARGUMENT. SO WAS THERE EVER A MOTION FILED THAT ATTACKED THIS STATUTE ON THE CONSTITUTIONAL PRIVACY GROUNDS?

WHEN WE DID THE MOTION TO STAY, ONE OF THE MAJOR ARGUMENTS WAS THIS WAS A INVASION OF THE RIGHT OF PRIVACY.

AND DID THE TRIAL JUDGE RULE ON THAT ISSUE?

YOU KNOW HOW CIRCUIT JUDGES RULE. EITHER DENY OR PREEMPT. DENIED THE MOTION FOR STAY. SO I GUESS HE RULED.

WHEN THE DISTRICT COURT DID ITS OPINION, WHAT DID IT SAY?

IT AGAIN, IT'S AN OPINION THAT IS A PAGE AND A HALF LONG APPROXIMATELY THAT SAYS O, THE REMEDIES WOULDN'T BE AVAILABLE.

HOW MUCH MORE COULD YOU GET YOUR OPPOSING COUNSEL AGREES WITH YOU. WELL NOT ONLY THAT THERE IS A CONFLICT. BUT ALL OF THESE THINGS ARE RELEVANT FACTORS FOR TRIAL COURT TO CONSIDER. AT LEAST THAT'S THE WAY I'M READING THE PRESENTATION THERE. SO,.

YOU READ A LITTLE MORE THAN I DID INTO HIS ARGUMENT. I THOUGHT HE WAS BASICALLY SAYING WE CAN DEAL WITH ALL THESE DISCOVERY ISSUES THAT MIGHT INTRUDE ON THE RIGHT OF PRIVACY IN THE CONTEXT OF THE DISCOVERY RULES. WHAT I'M SUGGESTING IS THAT IF YOU PERMIT THE FUFTA CLAIM TO GO FORWARD, THE INVASION OF PRIVACY ISSUES ARE AUTOMATICALLY RAISED. YOU CAN'T DEAL WITH THEM BY DISCOVERY BECAUSE THE STATUTE MAKES DISCOVERY OF THE FINANCIAL AFFAIRS OF THE THIRD PARTY TRANSFEREE RELEVANT. THEREFORE IN THE NORMAL BALANCING UNDER THE DISCOVERY RULES YOU'RE GOING TO SAY YES --.

WHAT I HEAR YOU SAYING IS THAT BEFORE THIS STATUTE WE HAD A SITUATION IN FLORIDA IN WHICH YOU DIDN'T GET TO TISSUE OF THE ASSETS OF THE OTHER PARTY TO A LITIGATION UNTIL YOU WERE A JUDGMENT CREDITOR.

THAT'S CORRECT.

AND WHAT YOU'RE SAYING IS THAT INHERENT IN THIS STAY, OF NOT GRANTING A STAY TO THE ACTION, A TRANSFER, THAT YOU ARE OBLITERATING THE RIGHT TO PRIVACY AS TO THOSE ASSETS.

EXACTLY. I MEAN IT AUTOMATICALLY MAKES IT RELEVANT, THE THIRD PARTIES TRANSFEREES FINANCIAL AFFAIRS. AND THEREFORE.

SO WHAT YOU'RE ARGUING IS THERE OUGHT NOT TO BE ANY DISCRETION ON THE PART OF THE TRIAL JUDGE, THAT IN EFFECT THIS STATUTE CANNOT AFFORD ANY REMEDIES PRIOR TO THERE BEING A JUDGMENT CREDITOR.

I HAVE NOT TAKEN THE ARGUMENT THAT FAR. I THINK THERE ARE DUE PROCESS ISSUES AND THAT THAT IS A SERIOUS ISSUE, BOLT UNDER THE THAT AND THE U.S. CONSTITUTION.

WELL IF IT DOESN'T HAVE A CONSTITUTIONAL PROBLEM, HOW CAN YOU SAY THAT THE, IT SHOULD BE STAYED BECAUSE BY THE VERY LANGUAGE OF THE STATUTE, IT SAYS THIS IS WHAT CAN BE DONE.

IT DOESN'T SAY -- IT SAYS MAY BE DONE.

RIGHT.

BUT THAT STATUTE IS DISCRETIONARY IN TERMS OF THE REMEDIES AND HOW YOU GET THERE.

BUT IT GIVES AUTHORITY FOR, STATUTORY AUTHORITY FOR THERE TO BE A ACTION PRIOR TO, ON THE PART OF ANY POTENTIAL CREDITOR PRIOR TO THERE BEING A, THAT PERSON OR ENTITY BECOMING A JUDGMENT CREDITOR.

NO QUESTION STATUTE SAYS THAT. I WOULD SUGGEST TO THE COURT THAT THE STATUTE CANNOT OVERRULE THE CONSTITUTION. AND IF IN FACT, ON THE RIGHT OF PRIVACY. AND -- LOST MY THOUGHT THERE A SECOND.

YOU NOT ONLY LOST YOUR THOUGHT BUT YOU HAVE NEVER RAISED CONSTITUTIONAL CHALLENGE IN THIS CASE. THIS ISN'T A CASE OF CONFLICT ON THE RESOLUTION OF SOME CONSTITUTIONAL CHALLENGE TO THIS STATUTE. YOU HAVE NOT RAISED A CONSTITUTIONAL ISSUE.

WE CERTAINLY ARGUED THAT AT THE TRIAL LEVEL.

I UNDERSTAND THAT YOU ARGUED ABOUT THE --.

AND AT THE FOURTH CIRCUIT LEVEL.

BUT THAT IS NOT TISSUE THAT WE HAVE IN THE ALLEGED CONFLICT BETWEEN THESE TWO CASES. SO, IN ANY CASE, -- TIME IS UP.

THANK YOU YOUR HONOR. YOUR VERY HELPFUL EXCHANGE WE HAVE USED UP THE TIME. WE ARE VERY APPRECIATIVE OF THE PARTICIPATION IN AWFUL YOU. COURT IS GOING TO TAKE ITS MORNING RECESS. WE WILL BE IN RECESS UNTIL ABOUT 20 MINUTES OF THE HOUR.

PLEASE RISE.